



Commission of Correction

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Commissioner

CHAIRMAN'S MEMORANDUM

NO: 5-2022

DATE: October 6, 2022

TO: SHERIFFS, COMMISSIONERS OF CORRECTION, JAIL ADMINISTRATORS, WARDENS, JAIL PHYSICIANS and FACILITY MEDICAL DIRECTORS

RE: New Regulations to Establish Minimum Standards for a Program of Medication Assisted Treatment in Jails

On October 7, 2021, Governor Hochul signed into law legislation (Chapter 432 of the Laws of 2021), which generally serves to allow incarcerated individuals with certain substance use disorders the opportunity to participate in a medication assisted treatment (MAT) program. Subsequent lawmaking (Chapter 432 of the Laws of 2021) postponed the effective date of the legislation to October 7, 2022.

The legislation requires the Office of Addiction Services and Supports (OASAS) to implement, in consultation with the county sheriff and other county governmental units, a jail-based substance use disorder treatment and transition services program that supports the initiation, operation and enhancement of substance use disorder treatment and transition services for persons with substance use disorder who are incarcerated in jails. Services provided by each program must be in accordance with plans developed by the county and approved by the OASAS Commissioner, to include alcohol and substance abuse withdrawal management, medication assisted treatment formulations, group and individual counseling and clinical support, peer support, discharge planning and re-entry and transitional supports.

The addition of subdivision (18) of section 45 of the Correction Law requires the New York State Commission of Correction to establish standards and guidelines for a program of MAT for incarcerated individuals in local correctional facilities equivalent to the program established in state correctional facilities, and to submit an annual report to the Governor and legislative leaders on the effectiveness of the programs established. The legislation imposes numerous and precise requirements on the plan, screening, placement, participation, and other requirements of each local correctional facility's substance use disorder treatment and transition services program.

Please be advised that, on October 6, 2022, the Commission voted to adopt, on an emergency basis, amendments and additions to its jail minimum standards that incorporate the legislation's requirements into Commission regulations. The regulations will become effective October 7, 2022 to coincide with the effective date of the legislation. Public comment on the regulations will be received for a period of 60 days following publication in the *State Register*, after which the Commission will either undertake final adoption or make revisions.

For your reference, attached please find the text of the adopted regulations. Note that underlined text is added and bracketed text is deleted. Questions related to the regulations should be sent to the Commission's Empire Unit at Empire@scoc.ny.gov.


Allen Riley, Chairman

Text:

A new subdivision (g) of section 7000.1 of Title 9 is added to read as follows:

(g) On or before the first day of February of each year, each sheriff, superintendent, commissioner, or other officer in charge of a local correctional facility, in conjunction with the jail physician, shall submit a report to the Commission of Correction detailing the operation, function and effectiveness of the facility's substance use disorder treatment and transition services program during the preceding calendar year. Such report shall be submitted in a form and manner prescribed by the Chair of the Commission.

Section 7002.6 of Title 9 is amended to read as follows:

A medical screening questionnaire shall be administered by facility staff at the time of admission or prior to the placement of an individual [prisoner] in a facility housing unit. Any screening response indicating a history of alcohol or substance abuse shall result in an immediate referral for additional medical screening pursuant to section 7011.5 of this Title.

Paragraph (2) of subdivision (a) of section 7002.9 of Title 9 is amended to read as follows:

(2) available health services, including physician visits, [and] sick calls and substance use disorder treatment and transition services;

A new Part 7011 of Title 9 is added to read as follows:

Part 7011

Substance Use Disorder Treatment and Transition Services

(Statutory authority: Correction Law §§45(6), 45(15), 45(18))

Sec.

7011.1 Purpose

7011.2 Definitions

7011.3 Policy

7011.4 Plan for providing services

7011.5 Program screening, placement and participation

7011.6 Program requirements

7011.7 Recordkeeping

§ 7011.1 Purpose.

The purpose of this Part shall be to ensure that each local correctional facility implement a jail-based substance use disorder treatment and transition services program that supports the initiation, operation and enhancement of substance use disorder treatment and transition services for incarcerated individuals with substance use disorder.

§ 7011.2 Definitions.

As used in this Part, the following definitions shall apply to the terms listed below:

- (a) *Commissioner* shall mean the Commissioner of the New York State Office of Addiction Services and Supports.
- (b) *Jail physician* shall mean the physician appointed or designated pursuant to section 501 of the Correction Law.
- (c) *Medication assisted treatment* shall mean the treatment of chemical dependence or abuse and concomitant conditions with medications requiring a prescription or order from an authorized prescribing professional.
- (d) *Chief administrative officer* shall mean the highest-ranking official of the facility.
- (e) *Sheriff* shall mean the individual having custody of a local correctional facility pursuant to subdivisions (1) and (2) of section 500-c of the Correction Law.

§ 7011.3 Policy.

Consistent with the requirements of this Part, each facility shall establish and implement policies and procedures for the operation of a substance use disorder treatment and transition services program pursuant to a plan approved by the Commissioner in accordance with section 19.18-c of the Mental Hygiene Law.

§ 7011.4 Plan for providing services.

- (a) Services to be provided by a facility's substance use disorder treatment and transition services program shall be in accordance with a plan developed by participating local governmental units, in collaboration with the sheriff, taking into account local needs and available resources.
- (b) Any such plan required by subdivision (a) of this section shall include, but not be limited to, the following:
- (1) Alcohol, benzodiazepine, heroin and opioid withdrawal management;
 - (2) At least one formulation of every form of medication assisted treatments approved for the treatment of a substance use disorder by the Federal Food and Drug Administration necessary to ensure that each individual

participating in the program receives the particular form found to be the most effective at treating and meeting their individual needs. The Commissioner may allow a facility a limited exemption to providing opioid full agonist treatment medications where the Commissioner determines that no providers that have received the required accreditation are located within a reasonable distance of the facility. A facility that does not have the resources available to meet standards set forth herein may apply to the Commissioner for a limited exception allowing such facility to enter into an agreement with a community- or jail-based program offering substance use disorder treatment and transition services to provide such services to individuals in the facility. Any such determination shall be reviewed on a regular basis;

(3) Group and individual counseling and clinical support;

(4) Peer support;

(5) Discharge planning; and

(6) Re-entry and transitional supports.

(c) Prior to implementation, the plan required by subdivision (a) of this section shall be approved by the Commissioner.

(d) A copy of the plan required by subdivision (a) of this section, any and all amendments and revisions thereof, and any approvals, exemptions and exceptions granted by the Commissioner shall be maintained within the facility by both the chief administrative officer and the jail physician.

§ 7011.5 Program screening, placement and participation.

(a) Without unnecessary delay, but no later than seventy-two (72) hours following a referral, an incarcerated individual shall receive a medical screening to determine if the individual suffers from a substance use disorder for which medication assisted treatment exists.

(b) Following the medical screening, an incarcerated individual who is determined to suffer from a substance use disorder for which medication assisted treatment exists shall be offered placement in the medication assisted treatment program. Placement in such program shall not be mandatory. The offer of placement shall be made in writing, and the decision to accept or deny placement shall be verified by the incarcerated individual's signature and witnessed and signed by an appropriate staff member. If, for any reason, the incarcerated individual is not able to verify, or refuses to verify the decision, the same must be recorded in writing on the offer of placement and witnessed and signed by two (2) appropriate staff members.

(c) Participation in the medication assisted treatment program shall not be unreasonably withheld from a qualified incarcerated individual. An incarcerated individual using medication assisted treatment prior to such individual's incarceration shall be eligible to, upon request by such individual, continue such treatment in the medication assisted treatment program for any period of time during such individual's incarceration.

(d) No individual shall be denied participation in the program on the basis of a positive drug screening upon entering custody or upon intake into the program; nor shall any individual receive a disciplinary infraction for such positive drug screening. No individual shall be removed from, or denied participation in the program on the basis of having received any disciplinary infraction before entry into the program, or during participation in the program.

(e) An incarcerated individual may enter into such program at any time during the individual's incarceration, and an individual's request to participate in the program shall result in an immediate referral for additional medical screening pursuant to subdivision (a) of this section.

§ 7011.6 Program requirements.

- (a) Each participating incarcerated individual shall work with an authorized specialist to develop an individualized treatment plan, including an appropriate level of counseling and planning for continuity of care upon return to the community.
- (b) Decisions regarding type, dosage, or duration of any medication regimen shall be made by a qualified health care professional licensed or certified under Title VIII of the Education Law who is authorized to administer such medication in conjunction with the incarcerated individual.
- (c) Such program shall also include conditions for a reentry strategy for incarcerated individuals who have participated in medication assisted treatment. Such strategy shall include, but not be limited to, providing each participating incarcerated individual with information on available treatment facilities in their area, information on available housing and employment resources, and any other information that will assist the incarcerated individual in continued recovery once released. Such program shall also assist the incarcerated individual in Medicaid enrollment, prior to release.
- (d) Such program shall provide participating incarcerated individuals preparing for release from the facility with a one-week supply of any necessary medication, where permissible under federal laws and regulations to continue their medication assisted treatment in an effort to prevent relapse.

§ 7011.7 Recordkeeping.

- (a) Records detailing each individual's screening, placement and participation, and each participating individual's program required by sections 7011.5 and 7011.6 of this Title including, but not limited to, the offer of placement, individualized treatment plan, medication regimen, conditions for a reentry strategy, and medication supply to released individuals, shall be maintained in writing or electronically, and shall sufficiently report the name of the incarcerated individual, the names of all facility/program staff involved, the date, and the name of the recording individual.

(b) Contemporary medication administration records shall be maintained for every incarcerated individual receiving medication assisted treatment pursuant to a facility's substance use disorder treatment and transition services program.

(c) The jail physician and other designated facility health staff shall retain all records required by this section in the facility, or shall otherwise have the ability to immediately access such records as necessary.

Subdivision (c) of section 7013.7 of Title 9 is amended to read as follows:

(c) An immediate decision concerning the disposition of each incarcerated individual [inmate] shall be made on the basis of information gathered during initial screening and risk assessment. Such disposition may include, but is not limited to, referrals to outside medical and mental health service providers. Any gathered information indicating a history of alcohol or substance abuse shall result in an immediate referral for additional medical screening pursuant to section 7011.5 of this Title.