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November 8, 2023

Kaitlan Baston MD MSc DFASAM
Acting Commissioner
New Jersey Department of Health
55 North Willow St.
Trenton, NJ 08608-1203

Re: Request for Release of Draft Regulations Permitting Integrated Outpatient
Care Licensure

Dear Acting Commissioner Baston:

We write to bring a critical issue to your attention. As a nationally renowned physician with expertise in providing integrated care including substance use disorder treatments to pregnant individuals, your commitment to integrated care is clear. Integrated care has the triple benefit of improving health outcomes, increasing access, and reducing stigma around behavioral health. Therefore, we urge the Department of Health to move forward expeditiously with proposing regulations creating an integrated facility license that permits provision of physical and behavioral health care services in the same setting by the licensee. As is described below, the publication of integrated care regulations is critical to the health of the people of New Jersey and is required by New Jersey law. This issue has been the subject of substantial public discussion over the past seven or more years. We would welcome the opportunity to meet to discuss this request and to assist the Department in any way appropriate to further the goal of behavioral health integration.

The Benefits of Integrated Care

Behavioral health disorders (*i.e.*, mental health and substance use disorders) are prevalent and increasing, yet there is a marked disparity in diagnosis, treatment, and outcomes for physical health and behavioral health conditions. This disparity is due, in part, to the current system of the lack of coordination between behavioral and physical conditions. Multiple studies

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have shown that integrating primary physical and behavioral health care improves access to high quality treatment, patient engagement, clinical outcomes, and patient satisfaction.

In an integrated system of care, a team of caregivers across a spectrum of physical and behavioral services provide whole-person care allowing real-time collaboration to address multiple patient needs and to provide universal screening for common behavioral and physical health conditions. These integrated care providers share electronic medical records to improve care coordination, engage with community social and behavioral health service providers and family members, and create individual patient centered care. Fully integrated care is the gold standard. Other forms of care, including colocation of primary and behavioral care providers, can also provide substantial benefits.

Facility Licensure in New Jersey

Voluminous research over the past two decades has established that whole-person integrated care saves lives and allows those with behavioral health diagnoses to integrate fully into society. In New Jersey (as in other states) the goal of integration has been frustrated by the Balkanization of outpatient licensure. In New Jersey, three sections of outpatient licensing regulations are relevant. First, “ambulatory care facilities” include primary physical care settings in which patients arrive and leave on the same day; these settings include primary physical health providers, although ambulatory facility licenses also apply to some substance use and mental health service providers. *See* N.J.S.A. 8:43A. Next, community mental health providers are subject to both the ambulatory care facility regulations, to more particular Department of Health regulations (N.J.A.C. 8:121-1.1 *et seq.*) and are also subject to programmatic oversight by the Department of Human Services, Division of Mental Health and Addiction Services (*see* N.J.A.C. 10:190). Substance use services providers are also subject to the Department of Health’s ambulatory care regulations as well as those of the Department of Human Services, Division of Mental Health and Addiction Services (*see* N.J.A.C. 10:161B).

On its face, New Jersey’s multiplicity of regulatory strictures is confusing. In addition, operational factors stemming from separate licensure, including disjointed inspection schedules and standards and inconsistent informal staff advice, further frustrate efforts to integrate care. Health providers, and their patients, are ill-served by this fractured, conflicting system, when the care itself should be holistic, integrated and seamless. Past Commissioners of the Departments of Human Services and Health have been aware of these issues and have taken some steps to address the problems, but the big problems remain.

Legislative and Regulatory Action to Date

The Department and other executive branch actors have taken some steps towards addressing the licensure and related problems inhibiting the provision of integrated care. On October 19, 2015, the Department issued a *Waiver to Permit Sharing of Clinical Space*, which stated that an outpatient facility providing primary care and licensed as an ambulatory care facility could expand its services to include behavioral health services provided that, among other things, the facility obtain a mental health or substance use disorder license.

On June 29, 2017, Governor Chris Christie issued reorganization Plan, No. 001-207 transferring the Division of Mental Health and Addiction Services (DMHAS) from the DHS to the DOH. DMHAS is the single agency responsible for oversight of New Jersey's system of community based behavioral health services including substance use disorder prevention and early intervention, emergency screening, outpatient mental health and substance use disorder services, partial care and partial hospitalization, case management, medication assisted treatment for substance use disorder, and other evidenced based practices, including the Program for Assertive Community Treatment (PACT). The reorganization plan, which became effective on August 28, 2017, notes:

A substantial body of research demonstrates that integrating physical and behavioral health care is the most effective way to treat the "Whole person", yet for historical reason, health care is too often fragmented into separate components: physical; mental; and substance use disorder...[a] solid clinical consensus has existed for decades that behavioral and physical health care should not be separated.

In November 2017, DOH created an eighteen-member Integrated Health Advisory Panel (IHAP) to assist in developing a patient-centered system of care including the integration of outpatient care for physical, mental health and substance use disorder. The IHAP was directed to identify statutory and regulatory barriers to the provision of integrated care.

On December 15, 2017, DOH issued guidance which discussed its intent to adopt regulations for a single license allowing facilities to render primary care, mental health care and substance use disorder care. The guidance stated that instead of harmonizing three different licensure and inspection programs, DOH planned "to reform its regulatory system to permit a single license for all three modalities of care."

On June 21, 2018, Governor Philip Murphy issued Reorganization Plan, No. 001-2018 which returned the Division of Mental Health and Addiction Services to the DHS. The plan states that one of its purposes is to continue "to advance integrated licensing efforts for physical and behavioral health care."

The plan notes:

In recent years, both DOH and DHS have furthered the shared goal of holistic treatment for individuals with substance use disorders and mental health conditions, by working to integrate behavioral and physical healthcare services. This has become increasingly important as the opioid crisis continues to deeply impact families and communities across New Jersey.

Further, the plan recognizes the efforts to create a single integrated license:

In addition, DOH has worked to facilitate better care integration through improved licensing of providers, including a shared-space license waiver to allow providers of primary care services to also offer on-site behavioral health treatment. Currently, DOH is in the process of creating a single license for such integrated care models.

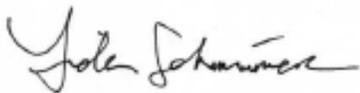
The IHAP worked for several months to address the multiple and complex issues involved in developing an integrated facility license. The IHAP, working with DOH and DHS, made several recommendations, but the core issues remain unresolved.

Twice in the same session, the New Jersey Legislature stepped in to address the described logjam regarding integrated care regulations. In P.L. 2017, c. 107 (codified at N.J.S.A. 26:2H-12.84), the Legislature required the “Commissioners of Health and Human Services, in consultation with each other, [to] adopt rules and regulations” to permit and encourage integration of primary and behavioral health care. This statute ordered the Commissioners to achieve this regulatory goal by January 2018 (*see* P.L. 2017 c. 107, § 2).

Next, P,L 2017 c. 294 (codified as N.J.S.A. 26:2H-5.1g) was enacted on January 16, 2018, requiring the Commissioner of Health to adopt regulations to create an integrated licensing system allowing facilities to provide primary care, mental health care and substance use disorder treatment under a single license. The regulations were to, among other things, identify the services that could be provided as primary care, mental health care of substance use disorder treatment under an integrated health care facility license; require a single integrated health care facility license which would identify the scope of primary care, mental health care and substance use disorder treatment services that the facility can provide under the integrated health care facility license; set staffing requirements; establish standards for information sharing and data collection; and permit sharing of clinical space, administrative staff, medical records storage and other facility resources. The law’s effective date was March 1, 2019. No regulations responsive to either legislative mandate have been published in draft or final form. We respectfully request that the DOH review and expeditiously resolve the remaining issues relating to the draft regulations on integrated provider licensure.

This issue requires action and leadership. As New Jersey struggles to address an overwhelming demand for mental health and addiction treatment services, further delay is both contrary to explicit legislative mandates and unacceptable from a public health perspective. We understand that this is a complex issue and there may be differences in opinion on certain specifics; but that is often the case with regulations. Nevertheless, the business of government and the advancement of good public health decisions must proceed. Action must be taken without further delay. We know that you know this better than anyone. Again, we are here to assist in any way possible. Thank you for your consideration.

Respectfully yours,



Linda Schwimmer, JD
President and CEO
New Jersey Health Care Quality Institute

The following individuals and organizations are joining in this letter request:

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**We are expecting additional signatures and will submit them upon receipt.*