HANYS®
Always There for Healthcare

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April 22, 2024

James V. McDonald, MD, MPH
Commissioner
New York State Department of Health
Corning Tower
Empire State Plaza
Albany, NY 12237

Re: General hospital emergency services behavioral health regulations (Amendment of Section 405.19 of Title 10 NYCRR)

Dear Commissioner McDonald:

The Healthcare Association of New York State, on behalf of our member nonprofit and public hospitals, nursing homes, home health agencies and other healthcare providers, appreciates the opportunity to comment on the proposed behavioral health regulations. These regulations would establish policies and procedures to identify, assess and refer patients with behavioral health presentations in hospital emergency departments.

Hospitals statewide agree that high-quality admission and discharge practices — and strengthening connections between hospitals and community-based providers — are essential to improving behavioral health outcomes.

HANYS strongly supports improving these practices but urges DOH to consider our requests for clarification and concerns about the feasibility and potential repercussions of implementing the regulations as written.

Many hospitals have made tremendous investments in transitional care initiatives to address the unique challenges faced by people living with mental illness. In addition, existing regulatory and accreditation standards include measures that align with several of the proposed DOH standards.

HANYS and other partner associations serving community-based mental health providers have collaborated to identify ways to support patients' care transitions. Most recently, HANYS convened ten associations serving diverse healthcare providers to develop concrete recommendations for addressing delays in access to care for patients with the most complex discharge care needs.

Recommendations developed from that work are published in our February 2024 report, *No more waiting: Recommendations to begin addressing care delays for New Yorkers with complex needs*.

Leverage clinician expertise to define behavioral health presentation

Every year, more than one in five New Yorkers experience symptoms of a mental disorder and nearly two million adults and youth live with a substance use disorder, according to DOH.[1] The proposed regulations would require hospitals to implement intensive measures to care for patients with "behavioral health presentations." Given the high number of people living with behavioral health conditions and the resource-strained healthcare environment, prioritizing these interventions will be crucial.

> **Recommendation: HANYS urges DOH to provide flexibility for clinicians to determine the criteria that define a behavioral health presentation.**

Align suicide risk screening requirements with existing standards

CMS requires acute care hospitals to administer a suicide risk screening for patients being evaluated and treated for behavioral health conditions as their primary reason for care and address any other circumstances where such screening is indicated.[2] The Joint Commission requires hospitals to screen for suicidal ideation using a validated tool for patients age 12 and older who are being evaluated or treated for behavioral health conditions as their primary reason for care.[3]

> **Recommendation: HANYS recommends that DOH ensure that New York state suicide risk screening requirements align with existing standards.**

Use existing standards and clinician expertise to identify risk of violence

CMS and accreditation agencies require hospitals to identify any patient at risk for intentional harm to self or others.[4] While most patients and visitors are respectful, hospitals face unparalleled rates of intimidating or violent behavior toward staff from patients and visitors *with and without* a behavioral health diagnosis. As a result, many have established early warning systems and interventions to identify the risk of and prevent violence among patients and visitors.[5]

DOH proposes that hospital emergency departments screen patients for violence risk based on whether they have a "behavioral health presentation." The American Psychological Association has reported that research has debunked the misconception that people with mental illness are largely responsible for acts of mass violence and a large proportion of community violence.[6,7] According to the U.S. Substance Abuse and Mental Health Services Administration, only 3% to 5% of violent acts can be attributed to people living with a serious mental illness.[8]

Screening patients solely based on a behavioral health presentation reinforces misunderstandings about the association between violence and behavioral health, exacerbating the stigma, social exclusion and discrimination experienced by many already facing the challenges of living with such conditions.

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[1] New York State Department of Health. (April 2015) Priority area: Mental health/substance abuse. https://www.health.ny.gov/prevention/prevention_agenda/mental_health_and_substance_abuse
[2] Centers for Medicare and Medicaid Services. (July 2023) Ligature Risk and Assessment in Hospitals. https://www.cms.gov/files/document/qso-23-19-hospitals.pdf
[3] The Joint Commission. (July 2019) Suicide Prevention. https://www.jointcommission.org/resources/patient-safety-topics/suicide-prevention
[4] Centers for Medicare and Medicaid Services. (July 2023) CMS Manual System Pub. 100-07 State Operations. https://edit.cms.gov/files/document/r216soma.pdf
[5] Healthcare Association of New York State. (December 2023) Hospitals are taking action to protect healthcare workers from rising violence. https://www.hanys.org/behavioral_health/violence_prevention_management/docs/2023_workplace_violence_in_hospitals.pdf
[6] Columbia University Department of Psychiatry. (July 2022) Is there a link between mental health and mass shootings? https://www.columbiapsychiatry.org/news/mass-shootings-and-mental-illness
[7] American Psychological Association. (July 2022) Mental illness and violence: Debunking myths and addressing realities. https://www.apa.org/monitor/2021/04/ce-mental-illness
[8] Substance Abuse and Mental Health Services Administration. (April 2023) Mental health myths and facts. https://www.samhsa.gov/mental-health/myths-and-facts

Furthermore, there are no validated violence screening tools that can predict ongoing risk of violence in the community after discharge. As a result, under the proposed regulations, clinicians would be required to conduct a full violence risk assessment on every patient with a behavioral health presentation.

> Recommendation: HANYS strongly urges DOH to reconsider the requirement to screen patients for violence risk solely based on a behavioral health presentation.

Develop a meaningful definition of complex needs

In light of the co-occurrence of chronic diseases, behavioral health conditions and social determinants of mental health, nearly all patients presenting with behavioral health needs will be classified as having "complex needs."[9,10] Most hospitals assess patients' health-related social needs and provide information about community resources and support services as part of their own internal initiatives, certain 1115 demonstration programs and accrediting agency requirements.[11,12] The meaning and clinical utility of the "complex needs" designation should be refined to strengthen the impact of interventions, directing limited resources to people who need them most.

> Recommendation: HANYS strongly urges DOH to narrow the definition of "individual with complex needs" and ensure there is strong alignment with existing initiatives and frameworks.

Ensure record reviews are accessible

The requirement to review data from specific platforms, like the Psychiatric Services and Clinical Knowledge Enhancement System and Statewide Health Information Network for New York might be difficult for some hospitals due to limited access and lack of integration with existing electronic medical records. Some of these data systems are not yet designed for clinical purposes. For example, in certain care settings, access to SHIN-NY is limited to only a small number of people, such as administrators.

Given the number of hospitals where medical practitioners review such data directly, potentially thousands of medical providers would request access to PSYCKES within a short period of time. Additional training will also be necessary to orient general practitioners to the mental health programs included in PSYCKES.

Furthermore, increasing threats of cyberattacks within the healthcare system demand more robust security solutions for hospitals. Security mechanisms used by PSYCKES (for example, soft tokens) do not always meet higher security standards. DOH must exercise caution to avoid unintended consequences that could arise if implementation is not thoughtful and appropriate.

> Recommendation: DOH should consider limitations to data access, including lack of electronic health record integration and the intensive training and registration necessary to operationalize access and address cybersecurity concerns.

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[9] Johns Hopkins Bloomberg School of Public Health. (2021) The Intersection of Mental Health and Chronic Disease. https://publichealth.jhu.edu/2021/the-intersection-of-mental-health-and-chronic-disease

[10] Centers for Disease Control and Prevention. (November 2023) The mental health of people with disabilities. https://www.cdc.gov/ncbddd/disabilityandhealth/features/mental-health-for-all.html

[11] Healthcare Association of New York State. (September 2023) Connecting with Communities: Community Health Initiatives Across New York State. https://www.hanys.org/community_health/chia/docs/chia_initiatives_fall_2023.pdf

[12] The Joint Commission. (July 2023) R3 Report Issue 38: National Patient Safety Goal to Improve Health Care Equity. https://www.jointcommission.org/standards/r3-report/r3-report-issue-38-national-patient-safety-goal-to-improve-health-care-equity

Support coordination with community-based programs

As a condition of their contracts with payers, a number of New York hospitals are required to make follow-up appointments with outpatient mental health providers within at least seven days after an ED visit for individuals six years of age and older with a diagnosis of mental illness.[13] These hospitals' performance is measured through the Healthcare Effectiveness Data and Information Set, a tool used by more than 90% of health plans to measure performance.

However, hospitals remain challenged to secure appointments and patients continue to face barriers to attending scheduled appointments. Obstacles include the unavailability of outpatient treatment locations, walk-in intake clinics or an adequate insurance network, and the inability to source timely appointments. Well-resourced community providers are essential to supporting patients transitioning out of crisis.

> **Recommendation: HANYS urges DOH to ensure companion requirements and resources for community-based programs align with the proposed hospital requirements.**

Mitigate unintended consequences

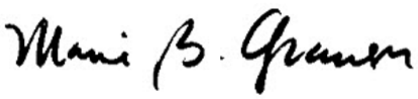
According to the American College of Emergency Physicians, "boarding in the emergency department is a national public health crisis."[14] A recent ACEP poll found that almost half of adults would delay or avoid emergency care due to concerns about boarding.[15] Findings from a 2023 survey of New York's hospitals and health systems revealed that patient care access is diminishing amid unrelenting fiscal and workforce challenges.[16]

Significant time and resources would be necessary to implement the proposed regulations. The proposed level of ED case management would strain already short-staffed EDs and require substantial training. This would result in extended ED stays, exacerbating delays in access to care for those with emergency care needs. Community-based care management, where patients have established relationships and are most intimately familiar with other community behavioral health resources, would be more effective in most cases.

Hospitals statewide are eager to work with your office to develop regulations that will improve timely access to care and support recovery for individuals seeking mental health services. We offer the expertise of our statewide behavioral health taskforce, comprised of multidisciplinary hospital and community-based behavioral health program leaders, to discuss these practices and standards.

If you have questions, contact Sarah DuVall, director, behavioral health, at 518.431.7769 or sduvall@hanys.org.

Sincerely,



Marie B. Grause, RN, JD
President

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[13] National Committee for Quality Assurance. (2024) Follow-up After Emergency Department Visit for Mental Illness. https://www.ncqa.org/hedis/measures/follow-up-after-emergency-department-visit-for-mental-illness

[14] American College of Emergency Physicians. Emergency Department Boarding and Crowding. https://www.acep.org/administration/crowding--boarding

[15] American College of Emergency Physicians. (October 2023) New Poll: Alarming number of patients would avoid emergency care because of boarding concerns. https://www.acep.org/news/acep-newsroom-articles/new-poll-alarming-number-of-patients-would-avoid-emergency-care-because-of-boarding-concerns

[16] Healthcare Association of New York State. (January 2024) Patient access is in jeopardy as hospitals face continue fiscal and workforce challenges. https://www.hanys.org/communications/publications/2024/2023_joint_association_hospital_survey_findings.pdf