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COMMISSIONER'S DIRECTIVE

To: Chief Operating Officers, DMH Operated and Contracted Inpatient Facilities

From: Joan Mikula, Commissioner

Date: April 15, 2020

Re: COVID-19 EMERGENCY DIRECTIVE 20-01
INPATIENT FACILITY OPERATIONS

The ongoing and escalating coronavirus pandemic has required numerous changes in normal facility operating procedures. Given the spread of the virus, and growing medical understanding of how it is carried and communicated, facilities are operating on the assumption that patients or staff are carrying the virus, even though they may not be symptomatic. Each facility must be prepared to care for patients who are confirmed or presumed positive, to the extent of the facility's medical capacity. In consultation with the Department of Mental Health's (DMH) State Medical Director, I am therefore directing the following modifications to the operating procedures of all DMH operated facilities:

Effective immediately access to DMH facilities shall be restricted to DMH and facility personnel, including vendor staff, providing essential direct care, clinical treatment, administrative, legal, educational, and core services. Included in this category are medically necessary providers such as outside laboratory personnel, medical consults and forensic evaluators; provided, however, that telephonic or video conferencing technology should be used for any medical consultations and forensic evaluations that can be conducted through such means

All elective consultations and evaluations shall either be conducted via telemedicine technology, or postponed.

Except as provided below, facility access by all other individuals, including visitors, shall be facilitated by telephonic or video conferencing technology. While each facility shall use its best efforts to facilitate patient access to such technology; however, patients and such other individuals are encouraged to utilize their own technology to the extent they can (such as FaceTime, Skype, Zoom, etc.).

Facilities shall develop protocols to allow delivery of necessary supplies in a manner that minimizes exposure of delivery personnel to patient care and workplace environments.

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Each facility shall direct the utilization of Personal Protective Equipment (PPE) in accordance with statewide directives and individual facility circumstances. Any decision to modify statewide directives (either enhancing or relaxing), shall be made in consultation with, and subject to the approval of, the DMH State Medical Director and Director of Inpatient Management.

Each facility shall determine appropriate restrictions on patient movement throughout the facility in consultation with, and subject to the approval of, the DMH State Medical Director and Director of Inpatient Management.

Grounds and community access shall be permitted for patients only to provide fresh air and as necessary to accomplish clinically appropriate discharge. Fresh air access shall be permitted, consistent with facility capacity, only in facilities that are able to provide access to secure outdoor space without traversing unsecure areas of the facility, and with appropriate social distancing.

Special provisions for Attorney Visits and Court Proceedings: Absent extenuating circumstances, as described below, attorneys representing patients in pending criminal, civil commitment or substituted judgment proceedings shall communicate with their clients through telephonic or video conferencing technology. Likewise, absent extenuating circumstances, independent medical examinations (IME) in connection with such proceeding shall be conducted remotely. Attorneys and IMEs who visit patients in person as provided below do so at their own risk.

Each facility shall facilitate patient access to such technology, and to provide confidential space for communications; however, patients and their attorneys (and IME's) are encouraged to utilize their own technology to the extent they can (such as FaceTime, Skype, Zoom, etc.). Facilities will allow patients to use their own devices for communicating with counsel and IMEs in a space that allows for private and confidential communication.

Extenuating circumstances: In-person visits by patients' attorneys or IMEs may occur in cases where the patient cannot or choose not to utilize available remote communication technology or if such technology is not available. If an attorney or IME believes that an in-person visit for any other reason is necessary, the attorney or IME shall communicate that need to the facility Superintendent or Chief Operating Officer (or designee), who, in consultation with facility legal counsel, will use best efforts to reach agreement on the conditions of such a visit. Conditions impacting the decision may include, but are not limited to, clinical conditions at the facility, degree of COVID-19 exposure or suspected exposure among the patients and staff at the facility. The routine practice of an attorney to meet with patients in-person in preparation for a court proceeding shall not, in and of itself, constitute extenuating circumstance.

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In-person visits will not be permitted for patients who are isolated as a result of confirmed or presumed positive (i.e. person under investigation or PUI) for COVID-19, or if access to the unit or facility has been further restricted as a result of infection control or quarantine directives.

In the event agreement cannot be reached on the conditions of an in-person visit, the visit will not occur unless, upon motion with notice to the facility, the Court in which the proceeding is pending orders otherwise.

In-person visits should be scheduled in advance, and must take place during normal business hours. Prior to any in-person visit, attorneys and IMEs will be subject to standard screening, which may include having their temperature taken. Screening will include the following criteria: signs or symptoms of a respiratory infection, such as fever, cough, shortness of breath, or sore throat; whether they have had, in the last 14 days, contact with someone with a confirmed diagnosis of COVID-19, is under investigation for COVID-19, or is ill with respiratory illness; or travel within the prior 30 days. If an attorney or IME answers "yes" to any of the criteria, they will not be permitted to enter the facility.

In-person visits shall only take place if the facility is able to provide a meeting space that is large enough for appropriate social distancing. Facilities will use best efforts to provide such space in areas that allow for private confidential communication. Attorneys and IMEs who fail to maintain appropriate social distancing will be asked to leave the facility

Facilities shall use best efforts to provide appropriate face masks for attorneys and IMEs that do not have their own. Facilities are not expected to provide assistance for attorneys in the use of personal protective equipment.

Facilities will provide hand sanitizer or sinks for hand washing for attorneys and IMEs to use before and after the visit.

Facilities shall on the filing of the petition, prepare an electronic or paper copy of medical records upon which the petitioner's expert has relied, intends to rely in forming an opinion or which the petitioner intends to introduce into evidence, and provide that copy to counsel on assignment or the filing of an appearance with hospital counsel and the court.

Each facility shall facilitate the conduct of Court hearings utilizing the facility's video-conferencing technology (Webex), the Court's technology or other remote technology at the direction of the Court.

This directive shall remain in place until the statewide state of emergency is terminated, unless earlier modified or terminated by me.