

RULE REVIEW

OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES

The NYS Office of Mental Retardation and Developmental Disabilities (OMRDD) published in the January 7, 2004 issue of the State Register, a Regulatory Agenda in satisfaction of the requirements of the State Administrative Procedure Act (SAPA) section 207. The purpose of this agenda was to identify and discuss OMRDD rule makings finalized during calendar year 1999, and which are subject to the cited SAPA section 207 five-year review of rules.

During calendar year 1999, OMRDD adopted five rules. These five rule makings were identified and described as follows at the time the respective notices were first published in the State Register:

1. MRD-04-99-00001 (*State Register* of 1/27/99). Amendments to 14 NYCRR sections 635-10.5 (HCBS Waiver Services), 671.7 (HCBS Waiver Community Residential Habilitation Services), 680.12 (Specialty Hospitals), 681.12 (Intermediate Care Facilities for persons with developmental disabilities), and 690.7 (Day Treatment Services for persons with developmental disabilities). These amendments establish various trend factor and cost of living adjustment (COLA) provisions that were applied (beginning January 1, 1999) within the context of the various rate/fee setting methodologies. Although specific trend factors for the different types of facilities and services are calculated annually, they are cumulative. COLAs are also important elements of the reimbursement methodologies. They need to be maintained, without modification, as integral parts of the methodologies to define how OMRDD established current rates/fees of reimbursement for the affected facilities or services that year.

2. MRD-14-99-00011 (*State Register* of 4/7/99). Amendment of 14 NYCRR Part 681 to repeal the entire section 681.12 - Rate setting and financial reporting in voluntary agency operated intermediate care facilities for persons with developmental disabilities (ICF/DDs). OMRDD had previously proposed and adopted (effective January 1, 1999) a new section 681.11 as part of a cyclical process of establishing a new base year and revised rate setting methodology for under 31-bed ICF/DD facilities. Section 681.12 was therefore to become obsolete by the beginning of the rate cycle for Region I facilities in July 1 of 1999. The amendment to repeal section 681.12 was adopted effective July 1, 1999, and its repeal need not be revisited.

3. MRD-23-99-00011 (*State Register* of 6/9/99). Amendments to 14 NYCRR section 681.11 - Rate setting and financial reporting in voluntary agency operated intermediate care facilities for persons with developmental disabilities (ICF/DDs). These amendments were necessary to clarify the cost category standards (screens) contained in the section 681.11 under thirty-one bed ICF/DD rate setting methodology. The amendments specified that the regional screens corresponding to the actual geographic location of the particular ICF/DD facility were the ones that were to be applied. Section 681.11 has since been replaced by its successor section 681.14, and it contains the clarifications proposed and adopted in the 1999 rule making. The clarifying language

continues to be pertinent so that OMRDD finds that these amendments adopted in 1999 should be maintained without modification in the successor section 681.14.

4. MRD-34-99-00006 (*State Register* of 8/25/99). Amendments to section 681.11 - Rate setting and financial reporting in voluntary agency operated intermediate care facilities for persons with developmental disabilities (ICF/DDs). These amendments allow for increased reimbursement for enhanced day training services received by certain residents of ICF/DD facilities, based upon documented need for more intensive day training. The provision to allow increased reimbursement for more intensive day training services is still necessary in the ICF/DD rate setting methodology. Therefore, OMRDD intends to maintain this provision without modification in the successor section 681.14.

5. MRD-43-99-00006 (*State Register* of 10/27/99).

Amendment of section 671.7 - Reimbursement and fiscal reporting for HCBS waiver community residential habilitation services. This amendment provides for an increase in funding for supervised and supportive community residence facilities in the form of an add-on to the operating portion of the reimbursement fee for such facilities. As with trend factors, the amendment needs to be maintained, without modification, to define how the current fee for community residential facilities is established.

In summary, the present five year-review of rules finalized in 1999 concerned amendments which revise OMRDD's rate/fee setting methodologies. The legal basis for the adoption of these rules is in sections 13.07, 13.09 and 43.02 of the Mental Hygiene Law. In particular, section 43.02 of the Mental Hygiene Law sets forth OMRDD's responsibility for setting Medicaid rates for services in facilities licensed by OMRDD.

These various rate/fee setting methodologies describe and determine the way in which OMRDD calculates the reimbursements to voluntary providers of services. Each successive amendment constitutes a building block integral to each such methodology. For these reasons, OMRDD proposed to maintain the amendments, without modification and as adopted in 1999.

The public was invited to review and comment on OMRDD's proposed disposition regarding these 1999 rule makings beginning January 7, 2004. OMRDD has received no comment pertaining to this January 7, 2004 notice of five-year review of rules, so that it will abide by its intended disposition with regard to the 1999 rule makings.

