

RULE REVIEW

Office of Mental Retardation and Developmental Disabilities

The NYS Office of Mental Retardation and Developmental Disabilities (OMRDD) published in the January 5, 2005 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 2000, and which are subject to the cited SAPA section 207 five-year review of rules.

During calendar year 2000, OMRDD adopted seven rules. These seven rule makings were identified and described as follows at the time the respective notices were first published in the State Register:

1. MRD-06-99-00016 (State Register of 2/10/99). Amendments to 14 NYCRR adding a Subpart 635-6: Allowability of capital costs and costs of transactions with related parties. This regulation sets forth standards for the allowability of capital costs, moveable equipment and personal property, and whether the costs are pursuant to transactions with related parties. The regulation also sets forth rules for the allowability of costs of transactions with related parties. The regulation is applicable to all facilities and services funded by OMRDD. It is current and continues to be necessary so that it must be maintained, without modification, to govern these topics within the context of the respective reimbursement methodologies.

2. MRD-46-99-00008 (State Register of 11/17/99). Amendment of 14 NYCRR by the addition of Subpart 635-5: Reimbursement of Medicaid service coordination. This regulation replaces two previously existing means of reimbursement for service coordination in the OMRDD service system with a single streamlined Medicaid Service Coordination reimbursement methodology. The subpart implements a monthly fee paid to the provider for each consumer served. It standardizes payments, streamlines billing procedures and reduces billing paperwork. It remains current and needs to be maintained, without modification.

3. MRD-01-00-00007 (State Register of 1/05/00). Amendments to 14 NYCRR section 633.12: Objection to services process. These amendments clarify and supplement objection to services processes as applied to consumers receiving HCBS waiver services and require that consumers receive written notice of the provider's intent to reduce, suspend, or discontinue services, and of the mechanism for resolving an objection to the provider's proposed action. The amendments continue to be pertinent and must be maintained, without modification. The statutory authority for this specific rule making is found in Mental Hygiene Law, sections 13.07, 13.09 and 16.00.

4. MRD-03-00-00004 (State Register of 1/19/00). Amendments to 14 NYCRR sections 635-10.5 (HCBS Waiver Services), 671.7 (HCBS Waiver Community Residential Habilitation Services), 680.12 (Specialty Hospitals), 681.11 (Intermediate Care Facilities for persons with developmental disabilities), and 690.7 (Day Treatment Services

for persons with developmental disabilities). These amendments establish trend factors to be applied (beginning January 1, 2000) within the context of the various rate/fee setting methodologies. Although specific trend factors are calculated annually, they are cumulative. They need to be maintained, without modification, to define how OMRDD establishes current rates/fees of reimbursement for the affected facilities or services.

5. MRD-11-00-00006 (State Register of 3/15/00). Amendment of 14 NYCRR section 635-10.5: Reimbursement of HCBS waiver services known as plan of care support services and family education and training. The amendments set forth the requirements, and the means of reimbursement for these two HCBS waiver services. Neither the service standards nor the reimbursement method have changed, so that the rule needs to be maintained without modification.

6. MRD-13-00-00008 (State Register of 3/29/00). Amendments to 14 NYCRR section 81.10: Fees and Reimbursement Fees. These amendments revise the fee-setting methodology for facilities certified as schools for persons with mental retardation and developmental disabilities to include reimbursement provisions for facilities classified as integrated residential communities. These reimbursement provisions remain current, and should be maintained without modification.

7. MRD-29-00-00004 (State Register of 7/19/00). Amendments to 14 NYCRR sections 635-10.5 (HCBS Waiver Services), 671.7 (HCBS Waiver Community Residential Habilitation Services), 679.6 (Clinic Treatment facilities), and 690.7 (Day Treatment facilities for persons with developmental disabilities). These amendments revise the respective reimbursement methodologies used to calculate fees of the referenced facilities or programs to establish salary enhancement add-ons effective July 1, 2000. Consistent with Chapter 54 of the Laws of 2000, the revisions recognize the costs of a \$750.00 per full time equivalent annual salary increase, plus salary related fringe benefits, for the direct care and support workers of these facilities and service provider agencies. While the subject matter of these amendments may appear dated with respect to their specificity, the standards must be maintained without modification, as necessary elements of fee calculations going forward.

With the exception of the rule making summarized in item no. 3 above, the present mandated five-year review concerns 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.

The public was invited to review and comment on OMRDD's proposed disposition regarding these 2000 rule makings as outlined in the notice that appeared in the January 5, 2005 issue of the State Register. OMRDD received no comment on this notice of five-year review of rules, so that it will abide by its intended disposition with regard to these regulations.

