

RULE REVIEW

Office of Mental Retardation and Developmental Disabilities

The NYS Office of Mental Retardation and Developmental Disabilities (OMRDD) published in the January 3, 2007 issue of the *State Register* a Public Notice of Five-Year Rule Review in satisfaction of the requirements of the State Administrative Procedure Act (SAPA) section 207. The purpose of this Notice was to identify and discuss OMRDD rule makings finalized during calendar years 1997 and 2002 which are subject to the cited SAPA section 207 five-year review of rules.

During calendar year 1997, OMRDD adopted nine rules. Five of these were proposed and adopted as minor rules and are, therefore, exempted from the review requirements by subdivision (5) of SAPA section 207. The remaining four rule makings finalized during 1997 were identified and described as follows at the time the respective Notices of Adoption were published in the *State Register*:

97-1. MRD-03-97-00003-A (*State Register* of 9/10/97). 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 trend factors to be applied (beginning January 1, 1997) 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.

97-2. MRD-15-97-00023-A (*State Register* of 7/25/97). Amendments to 14 NYCRR section 671.7. The purpose of these amendments was to establish a revised fee calculation add-on for voluntary agency operators of HCBS Waiver Community Residential Habilitation services. The add-on is still in effect and the amendments need to be maintained, without modification, in order to define how current fees of reimbursement are established.

97-3. MRD-28-97-00034-A (*State Register* of 9/24/97). Amendments to 14 NYCRR section 681.12 - Rate Setting and Financial Reporting for voluntary agency operated Intermediate Care Facilities for persons with developmental disabilities. The amendments revise the method of calculating reimbursement for ICF/DD facilities by adding a transportation component to the ICF/DD rate when a consumer's active treatment needs and individual program plan require a day service to which transportation is necessary. Because this component is still part of the ICF/DD rates, the regulation continues to be necessary and must be maintained without modification.

97-4. MRD-41-97-00006-A (*State Register* of 12/24/97). Amendments to 14 NYCRR section 671.7 - Reimbursement and fiscal reporting for voluntary agency operated providers of HCBS waiver community

residential habilitation services. The purpose of these amendments was to provide a one percent trend factor for these operators of community residences, and to structure the fees of reimbursement for the affected fee periods so that the amendments would result in the equivalent of a one percent increase when annualized. The trend factor is cumulative and must be maintained, without modification, to define how current fees are set.

During calendar year 2002, OMRDD adopted ten rules. These ten rule makings were identified and described as follows at the time the respective notices were published in the *State Register*:

02-1. MRD-03-02-0005-A (*State Register* of 3/20/02). Rate setting and financial reporting in voluntary agency operated intermediate care facilities for persons with developmental disabilities (ICF/DD). The amendments institute an additional subsequent (i.e., not base) period in the rate cycle for under 31-bed ICF/DD facilities beginning Jan. 1, 2002 for Region II and III facilities and July 1, 2002 for Region I facilities. They need to be maintained, without modification, to preserve the progression of rate years within cycles of the ICF/DD rate setting methodology and define how OMRDD establishes current rates of reimbursement for ICF/DD facilities.

02-2. MRD-04-02-00001-A (*State Register* of 4/10/02). Rate/fee setting in voluntary agency operated individualized residential alternative (IRA) facilities and home and community-based (HCBS) waiver services; HCBS waiver community residential habilitation services; specialty hospitals; intermediate care facilities for persons with developmental disabilities; and day treatment facilities serving persons with developmental disabilities. The amendments revise the methodologies used to calculate rates/fees of the referenced facilities or programs for the periods of Jan. 1, 2002 to Dec. 31, 2002 and July 1, 2002 to June 30, 2003 and establish trend factors to be applied within the context of the referenced reimbursement methodologies, effective January 1, 2002. 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.

02-3. MRD-04-02-00020-A (*State Register* of 12/31/02). Amendments of sections 681.11 and 681.14 of Title 14 NYCRR. Rate setting in voluntary agency operated intermediate care facilities for persons with developmental disabilities. The amendments allow for inclusion of day program services costs in the reimbursement rate of ICF/DD facilities. The amendments to section 681.11 were subsequently superseded by section 681.14 and all of section 681.11 was repealed. Current section 681.14 continues to allow for inclusion of day program services costs in the reimbursement rate of ICF/DD facilities and these amendments must therefore be maintained, without modification.

02-4. MRD-08-02-00006-A (*State Register* of 5/1/02). Rate/fee setting in voluntary agency operated individualized residential alternative (IRA) facilities and home and community based (HCBS) waiver services and intermediate care facilities for persons with developmental disabilities. The amendments implement payments to reflect adjustments

to the trend factors to be applied within the context of the referenced reimbursement 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.

02-5. MRD-09-02-00006-A (*State Register* of 11/27/02). Amendments to 14 NYCRR Parts 603 and 604 to revise public access to records pursuant to the Freedom of Information Law. The amendments make necessary technical corrections and revise standards to ensure consistency of OMRDD's regulations with State regulations implementing the Freedom of Information Law. The revisions continue to be necessary to ensure consistency of OMRDD's regulations with 14 NYCRR Part 1401, the regulations of the NYS Committee on Open Government responsible for oversight of implementation of the Freedom of Information Law, and will therefore be maintained without modification.

02-6. MRD-15-02-00012-A (*State Register* of 6/26/02). Amendments of sections 81.10, 635-4.4, 635-10.5, 635-99.1, 686.13 and 686.99 of Title 14 NYCRR to revise rate and fee setting for various developmental disabilities services provided under the auspices of OMRDD. The amendments revise the provisions governing the reimbursement of HCBS waiver residential habilitation services provided in individualized residential alternatives (IRAs) and make various other technical corrections, clarifications, or conforming amendments. These changes continue to be relevant and OMRDD intends to maintain them without modification.

02-7. MRD-29-02-00008-A (*State Register* of 9/25/02). Amendment of section 635-10.5 of Title 14 NYCRR to revise the price setting methodology governing the reimbursement of HCBS waiver residential habilitation services provided in individualized residential alternatives (IRAs). These amendments allow for the reimbursement of IRA residential habilitation services in the event that all residents of an IRA are relocated to an alternative site approved by OMRDD due to an emergency or for the health and safety of consumers. These regulatory provisions remain necessary and OMRDD intends to maintain the regulation without modification.

02-8. MRD-42-02-00005-A (*State Register* of 12/31/02). Amendment of section 635-10.5 of Title 14 NYCRR to revise the provisions determining the prices for HCBS waiver services provided in individualized residential alternatives (IRAs). These amendments institute an efficiency adjustment to be applied to the administration costs portion of the IRA price. The efficiency adjustment is carried forward into subsequent years and these price setting and reimbursement provisions remain necessary to describe how IRA prices were adjusted. OMRDD intends to maintain the regulation without modification.

02-9. MRD-43-02-00007-A (*State Register* of 12/24/02). Amendment of sections 681.11 and 690.7 of Title 14 NYCRR to revise rate and fee setting for voluntary agency operated day treatment programs and intermediate care facilities for persons with developmental disabilities (ICF/DD). The amendments revise the provisions governing the management of real property and capital indebtedness. Specifically, the amendments enable the use of a combination of a provider agency's lock box accounts for the purpose of retiring mortgage indebtedness on a single facility. These provisions continue to be relevant and necessary so that OMRDD intends to maintain them without modification.

02-10. MRD-44-02-00003-A (*State Register* of 12/31/02). Addition of section 681.14 to Title 14 NYCRR. Rate setting in voluntary agency operated intermediate care facilities for persons with developmental disabilities. The amendments establish calendar 1999 or 1999/2000 as a new base year, and calendar 2003 or 2003/2004 as a new base period for under 31 bed facilities, and revise cost category screens and regional values in the ICF/DD reimbursement methodology. The amendments constitute the basis of the current ICF/DD reimbursement methodology

for under 31 bed facilities and need to be maintained, without modification, to define how OMRDD establishes current rates of reimbursement for ICF/DD facilities.

With the exception of the rule making discussed in item 02-5, the present mandated five-year reviews concern 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. As concerns item 02-5, the statutory authority for promulgating and maintaining regulations to implement the Freedom of Information Law can be found in Article 6 of the Public Officers Law and in the regulations of the Committee on Open Government found at 21 NYCRR Part 1401.

The public was invited to review and comment on OMRDD's proposed disposition regarding these 1997 and 2002 rule makings as outlined in the Notice that appeared in the January 3, 2007 issue of the *State Register*. OMRDD received no comment on this Notice of Five-Year Rule Review, so that it will abide by its intended disposition with regard to these regulations.