

RULE REVIEW

Office of Mental Health

I. Background:

Section 207 of the State Administrative Procedure Act requires that any rule adopted by a State agency after 1996 be reviewed after five years, and thereafter, at five-year intervals. The purpose of the review is to establish whether or not the rule should be continued or modified.

In accordance with this statutory requirement, the New York State Office of Mental Health (OMH) hereby gives notice of the rules which were adopted by OMH during the calendar years 2004 and 1999. Note: Rulemakings which resulted in repeal of a Part, emergency rulemakings and other rules which have expired are not subject to rule review.

The public is invited to review and comment on the continuation or modification of any or all of the listed rules. Comments should be submitted in writing, no later than April 1, 2009, to Sue Watson, Office of Counsel, Bureau of Policy, Regulation and Legislation, NYS Office of Mental Health, 44 Holland Avenue, Albany, New York 12229 or via e-mail at swatson@omh.state.ny.us

II. Rule Review

1. #OMH-48-03-00009-A Operation and Medical Assistance for Outpatient Programs. State Register Publication Date: December 3, 2003; Adopted: May 5, 2004.

Purpose: Amendment of Parts 587 and 588 of Title 14 NYCRR to explicitly permit the provision of family treatment, through the addition of a definition of the service and standards for reimbursement in clinic treatment.

Analysis of Need: Prior to the adoption of this regulatory amendment, Parts 587 and 588 did not explicitly promote or preclude the provision of family treatment. In the absence of such recognition, some providers had appropriately billed for such services using a combination of a regular visit (i.e., a 30-minute session with a recipient of mental health services) and a collateral visit (i.e., a 30-minute session with a collateral). Providers were required to maintain clear documentation that at least 30 minutes of the session were devoted to the provision of services to the recipient, and that at least another 30 minutes were devoted to the provision of clinical support services to the collateral. Without such a distinction and the associated documentation, billing was not permissible. Many providers had requested such explicit permission. Family treatment is an optional, not a required service. The amendments to Parts 587 and 588 include a definition of family treatment to allow greater flexibility within a 60-minute time frame. Providers are required to document the overall participation of the recipient and the family members during the hour, but no longer need to meet the requirement that the 60 minutes be split exactly in half between the regular visit and the collateral visit. The amended regulations also accommodate 30-minute family treatment sessions, as well as family treatment sessions with multi-family groups.

Legal Base: Sections 7.09(b) and 31.04(a) of the Mental Hygiene Law grant the Commissioner the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction. Section 43.02(a) of the Mental Hygiene Law

provides that payments under the medical assistance program for outpatient services at facilities licensed by the Office of Mental Health shall be at rates certified by the Commissioner of Mental Health and approved by the Director of Budget. Sections 364(3) and 364-a of the Social Services Law give the Office of Mental Health responsibility for establishing and maintaining standards for medical care and services in facilities under its jurisdiction, in accordance with cooperative arrangements with the Department of Health.

2. #OMH-15-04-00002-A Outpatient Programs. State Register Publication Date: April 14, 2004; Adopted July 7, 2004.

Purpose: Amend Part 540 of Title 14 NYCRR to establish a faster and more appropriate process for determination of fitness to stand trial and return to court of a patient against whom criminal charges are pending.

Analysis of Need: The amendments to this regulation streamlined the proper decision-making authority regarding changes in the custody status of patients who have been committed to the custody of an Office of Mental Health forensic facility by a criminal court, after having been found to have a mental illness which renders them incapable of understanding the court proceedings against them or participating in their own defense. OMH has the responsibility to take steps, in the interest of public safety, to see that these individuals are kept at the appropriate level of custody and are promptly returned to the court when their mental status changes. The amendments established that the clinical director of the facility is responsible for determining whether a patient remains an incapacitated person or is fit to stand trial. The clinical director may designate certain facility psychiatrists to examine the patient and prepare a report and recommendation to the clinical director. This process meets all the requirements and expectations of the court orders involved.

Legal Base: Section 7.09(b) and (c) and Section 31.04(a) of the Mental Hygiene Law grant the Commissioner of the Office of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction, the authority to administer the forensic psychiatric program, and the power to adopt regulations for quality control, respectively. Article 730 of the Criminal Procedure Law establishes the role of the Commissioner of Mental Health in the process of determining the fitness to stand trial.

3. #OMH-18-04-00010-A Operation of Residential Treatment Facilities for Children and Youth. State Register Publication Date: May 5, 2004; Adoption: August 25, 2004.

Purpose: Amendment of Section 584.5(e) of Title 14 NYCRR to continue the temporary increase in the capacity of certain residential treatment facilities (RTF) to serve the needs of emotionally disturbed children and youth.

Analysis of Need: In 2000, the Office of Mental Health determined that an increase was needed in the existing RTF capacity serving seriously emotionally disturbed children and youth who reside in New York City. At that time, the regulations in effect specified RTF bed capacity serving primarily New York City residents could be temporarily increased until September 30, 2003, by up to ten additional beds

over the maximum of 56 per facility otherwise allowed by the regulation. Due to development delays in the implementation of residential alternatives, the expiration date needed to be changed to September 30, 2004. Therefore, the amendment was required to permit the continued necessary increase in RFT capacity until September 30, 2004. The issue has been the subject of review over subsequent years and has resulted in several changes in the expiration date. The current amendment filed in 2007 extends the expiration date until September 30, 2010.

Legal Base: Sections 7.09(b), 31.04(a)(2) and 31.26(b) of the Mental Hygiene Law grant the Commissioner the power and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction, to set standards of quality and adequacy of facility, and to adopt regulations governing residential treatment facilities for children and youth, respectively.

4. #OMH-14-04-00004-A Attendance Rules for Teachers. State Register Publication Date: April 7, 2004; Adoption: September 29, 2004.

Purpose: Amendments to Parts 250 and 251 of Title 14 NYCRR to conform overtime eligibility rules to labor management agreements.

Analysis of Need: The amendments ensured conformance of the regulations to labor management agreements in effect since October 1, 1990. The amendments revised Parts 250 and 251 to reflect that teachers, in titles assigned to grade 22 and below, employed by the Office of Mental Health, are eligible for overtime and that the title Education Director I, G-22, is no longer in the Management Confidential Unit. The changes established consistency with the determination by the Division of Budget of positions eligible for overtime.

Legal Base: Subdivision (b) of Section 7.09 of the Mental Hygiene Law grants the Commissioner of the Office of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

Section 130 of the Civil Service Law establishes salary grades for positions in the competitive, non-competitive and labor classes of the classified service of the State of New York in the collective negotiating units designated as the administrative services unit, the institutional services unit, the operational services unit and the division of military and naval affairs unit.

5. #OMH-35-04-00010-A Audits of Office of Mental Health Licensed or Operated Facilities, Programs or Units. State Register Publication Date: September 1, 2004; Adoption: December 8, 2004.

Purpose: Amendment to Part 552 of Title 14 NYCRR to clarify authority to require financial reports and audits.

Analysis of Need: The Commissioner of Mental Health is granted authority over regulated and funded programs under the Mental Hygiene Law, including the authority to require the maintenance of appropriate financial records and submission of financial reports. While statute clearly provides this authority, the authority was not specifically emphasized in the regulations, which is the legal authority most commonly referenced by regulated parties. The amendments to Part 552 address this concern, and clarify and comprehensively reflect the Commissioner's enforcement authority.

Legal Base: Subdivision (b) of Section 7.09 of the Mental Hygiene Law grants the Commissioner of the Office of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

Subdivision (a) of Section 31.04 of the Mental Hygiene Law provides that the Commissioner shall have the power to adopt regulations to effectuate the provisions and purposes of Article 31, including setting standards of quality and adequacy for records.

Section 31.07 of the Mental Hygiene Law grants the Commissioner the power to conduct investigations into the operation of providers and to make inspections and examine records, including, but not limited to, medical, service and financial records of facilities.

Subdivision (a) of Section 31.09 of the Mental Hygiene Law grants the Commissioner certain powers, including the power to inspect facilities and examine records.

Section 31.11 of the Mental Hygiene Law establishes the duty of every holder of an operating certificate to assist the Commissioner of Mental Health by complying with the Mental Hygiene Law and other

applicable laws and the regulations of the Commissioner in any investigation or inspection and permitting the Commissioner or an authorized representative to inspect its facility and all books and records.

Subdivisions (a) and (b) of Section 43.02 of the Mental Hygiene Law grant the Commissioner the power to set rates for facilities licensed under Article 31 of the Mental Hygiene Law and to require that such facilities submit such financial, statistical and program information as the Commissioner may determine necessary. Subdivision (c) of Section 43.02 authorizes the Commissioner to adopt regulations establishing a uniform system of reports and audits relating to quality of care, utilization and cost of services.

Sections 363(3) and 364-a(1) of the Social Services Law give the Office of Mental Health responsibility for establishing and maintaining standards for care and services eligible for Medicaid reimbursement in facilities under its jurisdiction, in accordance with cooperative arrangements with the Department of Health.

6. #OMH-08-99-00013-A Standards Pertaining to Payment for Residential Treatment Facilities for Children and Youth. State Register Publication Date: February 24, 1999; Adoption: July 21, 1999.

Purpose: To amend Part 576 to conform to Federal regulations (42 CFR 440.160).

Analysis of Need: The amendment was necessary to ensure conformance of the Office of Mental Health's regulations to an amendment of Federal regulations, which permits a choice of accreditation organizations that may be used by regulated parties to fulfill the requirements for Medicaid approval of, and payment to, residential treatment facilities for children and youth. The Federal regulations previously required accreditation by the Joint Commission on Accreditation of Healthcare Organizations.

Legal Base: Sections 7.09 and 31.04 of the Mental Hygiene Law grant the Commissioner of the Office of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

Subdivision (a) of Section 31.04 of the Mental Hygiene Law grants the Commissioner of the Office of Mental Health the power and responsibility to adopt regulations to set standards of quality and adequacy of facilities, equipment, personnel, services, records, and programs for the rendition of services for persons with mental illness pursuant to an operating certificate.

7. #OMH-32-99-00001-A Prior Approval Review for Quality and Appropriateness. State Register Publication Date: August 11, 1999; Adoption: November 24, 1999.

Purpose: To amend section 551.4 to include a definition of "sponsor".

Analysis of Need: The amendment to Part 551 provided clarification language related to the definition of the sponsor of a program. The language delineates factors which have been used to determine whether or not a sponsor has substantial control over a provider of services. No new obligations were imposed upon designated providers as a result of this amendment.

Legal Base: Subdivision (b) of Section 7.09 of the Mental Hygiene Law grants the Commissioner of the Office of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

Subdivision (a) of Section 31.04 of the Mental Hygiene Law grants the Commissioner of the Office of Mental Health the power and responsibility to adopt regulations to set standards of quality and adequacy of facilities, equipment, personnel, services, records, and programs for the rendition of services for persons with mental illness pursuant to an operating certificate.