

# RULE REVIEW

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## Office of Mental Health

Pursuant to Section 207 of the State Administrative Procedure Act, notice is hereby provided of the continuation without modification of the following rules which were reviewed in 2009 by the Office of Mental Health. These rules had been adopted during the calendar years 2004 and 1999. Notice that a review of these regulations would be conducted and that public comment would be accepted until April 1, 2009 was published in the February 25, 2009 State Register. All section and Part references are to Title 14 of the New York Codes, Rules and Regulations.

Part 587 and Part 588 - Operation of and Medical Assistance for Outpatient Programs

Statutory Authority: Sections 7.09(b), 31.04(a) and 43.02(a) of the Mental Hygiene Law; Sections 364(3) and 364-a of the Social Services Law

Justification: The Agency has determined that the continuation of this regulation without modification is necessary to explicitly permit the provision of family treatment, through the addition of a definition of the service and standards for reimbursement in clinic treatment. Family treatment is an optional service, not a required one. The amendments to Parts 587 and 588 include a definition of family treatment to allow greater flexibility within a 60-minute timeframe, and accommodate 30-minute family treatment sessions as well as family treatment sessions with multi-family groups.

Assessment of Public Comment: None received.

Part 540 - Patients Committed to the Custody of the Commissioner Pursuant to CPL Article 730

Statutory Authority: Section 7.09(b) and (c) and Section 31.04(a) of the Mental Hygiene Law; Article 730 of the Criminal Procedure Law

Justification: The Agency has determined that the continuation of this regulation without modification is necessary to provide a fast and appropriate process for determination of fitness to stand trial and return to court of a patient against whom criminal charges are pending. This regulation streamlines 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 establish 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.

Assessment of Public Comment: None received.

Section 584.5(e) - Operation of Residential Treatment Facilities for Children and Youth

Statutory Authority: Sections 7.09(b), 31.04(a)(2) and 31.26(b) of the Mental Hygiene Law

Justification: The Agency has determined that the continuation of this regulation without modification is necessary to continue the temporary increase in the capacity of certain residential treatment facilities (RTF) to serve the needs of emotionally disturbed children and youth. 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.

Assessment of Public Comment: None received.

Part 250 and Part 251 Attendance Rules for Teachers

Statutory Authority: Section 7.09(b) of the Mental Hygiene Law; Section 130 of the Civil Service Law

Justification: The Agency has determined that the continuation of this regulation without modification is necessary to ensure 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 who are employed by the Office of Mental Health and who are in titles assigned to grade 22 and below 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.

Assessment of Public Comment: None received.

Part 552 - Audits of Office of Mental Health Licensed or Operated Facilities, Programs or Units

Statutory Authority: Sections 7.09(b), 31.04(a), 31.07, 31.09(a), 31.11, 43.02(a), (b) and (c) of the Mental Hygiene Law; Sections 363(3) and 364-a(1) of the Social Services Law

Justification: The Agency has determined that the continuation of this regulation without modification is necessary to clarify authority to require financial reports and audits. 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 this regulation address this concern, and clarify and comprehensively reflect the Commissioner's enforcement authority.

Assessment of Public Comment: None received.

Part 576 - Standards Pertaining to Payment for Residential Treatment Facilities for Children and Youth

Statutory Authority: Sections 7.09 and 31.04 of the Mental Hygiene Law

Justification: The Agency has determined that the continuation of this regulation without modification is necessary to conform to Federal regulations (42 CFR 440.160). The amendment ensures 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.

Assessment of Public Comment: None received.

Section 551.4 - Prior Approval Review for Quality and Appropriateness

Statutory Authority: Sections 7.09(b) and 31.04(a) of the Mental Hygiene Law

Justification: The Agency has determined that the continuation of this regulation without modification is necessary to amend section 551.4 to include a definition of "sponsor". In addition, 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.

Assessment of Public Comment: None received.