

RULE REVIEW

Office of Mental Health

Rule Review - 2007, 2002 and 1997

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. Consensus rule makings, emergency adoptions, rule makings which resulted in the repeal of a Part, and other rules that have expired are not subject to rule review.

In accordance with this statutory requirement, the New York State Office of Mental Health (Office) hereby gives notice of rules which were adopted by this Office during the calendar years 2007, 2002 and 1997.

The public is invited to review and comment on the continuation or modification of the rules listed below. Comments should be submitted in writing, no later than May 1, 2012, to Sue Watson, Office of Counsel, Bureau of Policy, Regulation and Legislation, New York State Office of Mental Health, 44 Holland Avenue, Albany, New York 12229 or via e-mail at Sue.Watson@omh.ny.gov.

#OMH-13-06-00014-A Due Process Protections Afforded to Residents of Residential Programs

State Register Publication Date: March 29, 2006; Adopted January 24, 2007

Action: Amendment of Sections 595.9 and 595.10 of Title 14 NYCRR

Purpose: To strengthen the due process protections for certain residents of residential programs serving adults diagnosed with a severe and persistent mental illness who are discharged prior to being "discharge ready".

Analysis of Need: The amendments to Part 595 established an enhanced review process to afford sufficient due process protections to residents being discharged. The amendments also set some additional requirements for both programs and the Office to follow in establishing and implementing grievance procedures for residents who are being discharged.

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 and to set standards of quality and adequacy of facilities, equipment, personnel, services, records and programs for the provision of services for persons with mental illness pursuant to an operating certificate.

#OMH-46-06-000141-A Criminal History Record Review

State Register Publication Date: November 15, 2006; Adopted February 21, 2007

Action: Amendment of Part 550 of Title 14 NYCRR

Purpose: To require prospective employees and volunteers of providers of mental health services who will have regular and substantial unrestricted or unsupervised physical contact with clients to undergo criminal history record checks.

Analysis of Need: The regulation is needed to implement the Office's statutory duty to facilitate requests for criminal background record checks, and fulfill the agency's statutorily imposed duty of ensuring that the health, safety and welfare of clients are not unreasonably placed at risk.

Legal Base: 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 31.35 of the Mental Hygiene Law provides that each provider of mental health services subject to its requirements must request, through the Office, a criminal history background check for each prospective operator, employee, or volunteer of such provider of services. Subdivision (12) of Section 845-b of the Executive Law requires the Office to promulgate rules and regulations necessary to implement criminal history information requests.

#OMH-26-07-00007-A Comprehensive Psychiatric Emergency Program (CPEP) Rates

State Register Publication Date: June 12, 2007; Adopted: August 29, 2007

Action: Amendment of Section 591.5 of Title 14 NYCRR

Purpose: To increase the Medicaid reimbursement rates associated with CPEP programs.

Analysis of Need: The regulation has been amended several times since 2007 to allow for changes in Medicaid rates for CPEP services.

Legal Base: 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 31.04 of the Mental Hygiene Law empowers the Commissioner to issue regulations setting standards for licensed programs for the provision of services for persons with mental illness.

#OMH-27-07-00002-A Medical Assistance Payment for Outpatient Programs

State Register Publication Date: July 3, 2007; Adopted September 17, 2007

Action: Amendment of Part 588 of Title 14 NYCRR

Purpose: To increase Medicaid rate schedules for clinic treatment programs and day treatment programs serving children, equalize reimbursement fees for certain outpatient programs, and make other changes consistent with the enacted 2005-06 and 2006-07 State Budget.

Analysis of Need: The regulation has been amended several times since 2007 to allow for changes in the Medicaid rate schedules per the Executive State Budget.

Legal Base: 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 31.04 of the Mental Hygiene Law empowers the Commissioner to issue regulations setting standards for licensed programs for the provision of ser-

ices for persons with mental illness. Sections 364 and 364-a of the Social Services Law give the Office 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. Chapter 54 of the Laws of 2005 and Chapter 54 of the Laws of 2006 provide increased funding appropriations in support of amendments to 14 NYCRR Part 588.

#OMH-29-07-00013-A Operation of Residential Treatment Facilities for Children and Youth

State Register Publication Date: July 18, 2007; Adopted September 26, 2007

Action: Amendment of Section 584.5(e) of Title 14 NYCRR

Purpose: To continue the temporary increase in the capacity of certain residential treatment facilities (RTF) to serve the needs of children and youth with serious emotional disturbance.

Analysis of Need: In 2000, the Office determined that an increase was needed in the existing RTF capacity serving children and youth with serious emotional disturbance 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, 2004, 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 was subsequently changed to September 30, 2007. Therefore, the amendment was required to permit the continued necessary increase in RFT capacity until September 30, 2007. 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 2010 extends the expiration date until September 30, 2013.

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.

#OMH-08-02-00005-A Medical Assistance Rates of Payment for Assertive Community Treatment Services

State Register Publication Date: February 20, 2002; Adopted August 28, 2002

Action: Addition of Part 508 of Title 14 NYCRR

Purpose: To establish the standards and methods for determining the rates of payment to assertive community treatment (ACT) programs for services provided to active clients.

Analysis of Need: The regulation must remain in effect as the Assertive Community Treatment (ACT) program is an important model of service for persons in the community with serious mental illness. The Office intends to file a Notice of Proposed Rule Making in the near future to update and clarify the reimbursement standards and methodology pertaining to providers of ACT services.

Legal Base: 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 43.02 of the Mental Hygiene Law provides that payments under the Medical Assistance Program for services approved by the Office shall be at rates certified by the Commissioner of Mental Health and approved by the Director of Budget. Subdivision (b) of Section 43.02 of the Mental Hygiene Law gives the Commissioner the authority to request from operators of facilities licensed by the Office such financial, statistical and program information as the Commissioner may determine to be necessary. Subdivision (c) of Section 43.02 of the Mental Hygiene Law gives the Commissioner the authority to adopt rules and regulations relating to methodologies used in the establishment of schedules of rates of payment for services.

#OMH-24-02-00003-A Operation of Licensed Programs for Children and Adolescents with Serious Emotional Disturbance

State Register Publication date: June 12, 2002; Adopted September 11, 2002

Action: Amendment of Section 594.5(g) of Title 14 NYCRR

Purpose: To increase the approved capacity of family-based treatment programs homes and respite homes.

Analysis of Need: The increase in capacity of family-based treatment homes allowed for the more effective placement of children and youth served in the program at that time. Since then, the fiscal condition of the State has forced all parts of government to strategically cut funding and reduce services. In recent years, the use of family-based treatment has been underutilized, and the Office has made the decision to close the program effective March 31, 2013. New admissions to the program have ceased as of July, 2011. At this juncture, the Office believes the elimination of this provision of 14 NYCRR Part 594 is premature, since all regulations pertaining to the family-based treatment program will be rescinded after March 31, 2013.

Legal Base: 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 31.04 of the Mental Hygiene Law empowers the Commissioner to issue regulations setting standards for licensed programs for the rendition of services for persons with mental illness.

#OMH-24-02-00002-A Medical Assistance Payment for Outpatient Programs

State Register Publication Date: June 12, 2002; Adopted November 20, 2002

Action: Amendment of Sections 588.13 and 592.5 of Title 14 NYCRR

Purpose: To establish compliance criteria for certain outpatient programs.

Analysis of Need: The regulation is needed to establish criteria for certain outpatient programs in order to receive supplemental Medical Assistance reimbursement.

Legal Base: 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 31.04 of the Mental Hygiene Law empowers the Commissioner to issue regulations setting standards for licensed programs for the rendition of services for persons with mental illness.

#OMH-28-02-00020-A Medical Assistance Rates of Payments

State Register Publication Date: July 10, 2002; Adopted December 11, 2002

Action: Amendment of Part 506 of Title 14 NYCRR

Purpose: To establish reimbursement standards for supportive case management services (ICM), supportive case management services (SCM) and blended ICM/SCM case management services.

Analysis of Need: The regulation must remain in effect to ensure the standards and methods for determining rates of payment for case management services provided to active clients by intensive case management, supportive case management and blended ICM/SCM case management programs.

Legal Base: Section 7.09 of the Mental Hygiene Law grants the Commissioner of the Office of Mental Health the authority and responsibility to plan, establish and evaluate programs and services for the benefit of individuals with mental illness, and to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction. Section 43.02(c)(ii) of the Mental Hygiene Law provides that payments under the Medical Assistant Program for services approved by the Office shall be at rates certified by the Commissioner of Mental Health and approved by the Director of Budget. Section 364(3) of the Social Services Law provides that each office within the Department of Mental Hygiene shall be responsible for establishing and maintaining standards for medical care and services received in institutions operated by it or subject to its supervision, pursuant to Mental Hygiene Law.

#OMH-48-96-00004-A - Rates of Reimbursement - Hospitals Licensed by the Office of Mental Health

State Register Publication Date: November 27, 1996; Adopted February 12, 1997

Action: Amendment of Paragraph (1) of Subdivision (e) of Section 577.7 of Title 14 NYCRR

Purpose: To amend the reimbursement methodology for private psychiatric hospitals effective July 1, 1996.

Analysis of Need: The regulation was needed to eliminate the inflation factor for 1996, effective July 1, 1996, which was consistent with the State's policy for other health care providers. The provision was amended again in 2010, when the inflation factor used to trend costs was limited to the inflation factor for the first year of the two-year period. This action was consistent with the elimination of the inflationary adjustments and trends applied to rates for community health programs in 2009-2010 and reflected the serious fiscal condition of the State.

Legal Base: Sections 7.09 and 43.02 of the Mental Hygiene Law grant the Commissioner the power and responsibility to adopt regulations that are necessary and proper to implement matters under the Commissioner's jurisdiction and to establish standards and methods for determining rates of payment made by government agencies pursuant to Title II of Article 5 of the Social Services Law for services provided by facilities, including private psychiatric hospitals licensed by the Office.

#OMH-17-96-00001-A - Quality of Care and Treatment

State Register Publication Date: January 15, 1997; Adopted April 2, 1997

Action: Amendment of Section 27.7 of Title 14 NYCRR

Purpose: To clarify requirements pertaining to restraint and seclusion.

Analysis of Need: The regulation is under review for possible amendment, but must remain in effect until revised. Provisions regarding restraint and seclusion have been incorporated into other Parts of Title 14 NYCRR.

Legal Base: Section 7.09 of the Mental Hygiene Law grants the Commissioner of the Office of Mental Health the authority and responsibility to plan, establish and evaluate programs and services for the benefit of individuals with mental illness, and to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction. Section 31.04 of the Mental Hygiene Law empowers the Commissioner to issue regulations setting standards for licensed programs for the rendition of services for persons with mental illness.

#OMH-11-97-00022-A - Medical Assistance Rates of Payment for Residential Treatment Facilities for Children and Youth

State Register Publication Date: March 19, 1997; Adopted June 11, 1997

Action: Amendment of Section 578.8 of Title 14 NYCRR

Purpose: To provide reasonable and adequate reimbursement to efficiently-operated programs.

Analysis of Need: Regulation was needed to promulgate rates of payment for the rate year July 1, 1996 through June 30, 1997. The amendment allowed for a one-year trend factor effective July 1, 1996, whereas previously a two-year trend factor had been allowed. The amendment also adjusted the corridor applied to average costs from five percent to seven and one-half percent. The amended rule was necessary to ensure that the rates paid provided reasonable and adequate reimbursement to efficiently and economically-operated programs so that they could conform with applicable State and Federal laws, regulations and quality and safety standards.

Legal Base: Sections 7.09 and 43.02 of the Mental Hygiene Law grant the Commissioner the power and responsibility to adopt regulations that are necessary and proper to implement matters under the Commissioner's jurisdiction and to establish standards and methods for determining rates of payment made by government agencies pursuant to Title II of Article 5 of the Social Services Law for services provided by facilities, including residential treatment facilities for children and youth operated by the Office.

#OMH-19-97-000150A - Audits of Office of Mental Health Licensed or Operated Facilities, Programs or Units

State Register Publication Date: May 14, 1997; Adopted July 23, 1997

Action: Addition of Subdivision (e) of Section 552.7 of Title 14 NYCRR

Purpose: To implement standards to assess interest payments on overdue repayment plans for ineligible expenses and unreported income.

Analysis of Need: Regulation is needed to allow the Commissioner to implement the provisions of Chapter 55 of the Laws of 1992.

Legal Base: Sections 7.09 and 43.02 of the Mental Hygiene Law grant the Commissioner the power and responsibility to adopt regulations that are necessary and proper to implement matters under the Commissioner's jurisdiction and to establish standards and methods for determining rates of payment made by government agencies pursuant to Title II of Article 5 of the Social Services Law. Chapter 55 of the Laws of 1992 provides the authority for assessing interest on non-tax obligations to the State.

#OMH-30-97-00049A - Medical Assistance Payment for Outpatient Programs

State Register Publication date: July 30, 1997; Adopted October 29, 1997

Action: Addition of new Section 599.14 to Title 14 NYCRR

Purpose: To access Federal Medicaid program dollars to offset State aid funding of various community support program services.

Analysis of Need: The regulation is needed to ensure the fiscal viability of providers of community support program services and ensure the continued provision of appropriate services to individuals with mental illness.

Legal Base: Section 7.09 of the Mental Hygiene Law grants the Commissioner of the Office of Mental Health the authority and responsibility to plan, establish and evaluate programs and services for the benefit of individuals with mental illness, and to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction. Section 31.04 of the Mental Hygiene Law empowers the Commissioner to issue regulations setting standards for licensed programs for the rendition of services for persons with mental illness.

