

RULE REVIEW

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 that were reviewed in 2012 by the Office of Mental Health (Office). These rules had been adopted during the calendar years 2007, 2002 and 1997. Notice that a review of these regulations would be conducted and that public comment would be accepted until March 1, 2012 was published in the March 7, 2012 State Register. All Part and Section references are to Title 14 of the New York Codes, Rules and Regulations.

#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

Statutory Authority: Mental Hygiene Law Sections 7.09 and 31.04

Assessment of Public Comment: The Office received one letter of comment concerning #OMH-13-16-00014-A - Due Process Protections Afforded to Residents of Residential Programs - 14 NYCRR Sections 595.9 and 595.10. The commenter stated the belief that the due process protections found in 14 NYCRR Part 595 should continue and then went on to describe recommendations to augment the regulations in the future. The writer suggested an increase in the allowable time frames for submission of written objections and requests for appeal. The writer also recommended a more extensive process for resident placement, the addition of a clinical or mediation procedure, and a formal process of evidence gathering.

Justification: The Office acknowledges receipt of these comments and will take them into consideration if future amendments to the regulation are deemed necessary. The subject amendments to Part 595 were intended to enhance the due process protections established in Section 595.9 for non discharge-ready residents who were about to be discharged. These amendments were made as a result of a settlement agreement involving Disability Advocates, Inc. The facts and statistics available since the new process was put into place do not support a contention that additional amendments are necessary at this time. Based on several years of implementation, it is the Office's position that the due process provisions found in Part 595 are sufficient. The Office has determined that continuation of this regulation without modification is necessary to maintain not only the enhanced due process protections available to residents who are being discharged without their agreement, but also the additional requirements established by the amendments for programs and OMH to follow in developing and implementing grievance procedures for residents who are being discharged.

#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

Statutory Authority: Mental Hygiene Law Sections 7.09 and 31.35; Executive Law Subdivision (12) of Section 845-b

Assessment of Public Comment: None received.

Justification: The Office has determined that the continuation of this regulation without modification is necessary to fulfill the Office's statutory duty to facilitate requests for criminal background record checks, and carry out the Office's statutorily imposed duty of ensuring that the health, safety and welfare of clients are not unreasonably placed at risk.

#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

Statutory Authority: Mental Hygiene Law Sections 7.09 and 31.04

Assessment of Public Comment: None received.

Justification: Recognizing that the regulation has been amended several times since 2007 to allow for changes in Medicaid rates for CPEP services, the Office has determined that the continuation of this regulation without modification is necessary to document the Medicaid reimbursement rates associated with CPEP programs.

#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

Statutory Authority: Mental Hygiene Law Sections 7.09 and 31.04; Social Services Law Sections 364 and 364-a; Chapter 54 of the Laws of 2005 and Chapter 54 of the Laws of 2006

Assessment of Public Comment: None received.

Justification: Recognizing that the regulation has been amended several times since 2007 to allow for changes in Medicaid rate schedules per the enacted State budget, the Office has determined that the continuation of this regulation without modification is necessary to document the Medicaid reimbursement rates associated with clinic treatment programs and day treatment programs serving children.

#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

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

Assessment of Public Comment: None received.

Justification: The Office 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 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, 2007. Therefore, the amendment was required to permit the continued necessary increase in RTF 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.

#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

Statutory Authority: Mental Hygiene Law Sections 7.09, and 43.02

Assessment of Public Comment: None received.

Justification: The Office has determined that the continuation of this regulation without modification is necessary to maintain the standards and methods for determining the rates of payment to assertive community treatment (ACT) programs for services provided to active clients. The Office has filed a Notice of Proposed Rule Making with the Department of State to update and clarify the reimbursement standards and methodology pertaining to providers of ACT services. In the interim, the existing Part 508 must remain in effect until such time as the proposed rule can be adopted as final.

#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

Statutory Authority: Mental Hygiene Law Sections 7.09 and 31.04

Assessment of Public Comment: None received.

Justification: The Office has determined that the continuation of this regulation without modification is necessary at this time. The regulation increased the approved capacity of family-based treatment programs homes and respite homes. This increase in capacity 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 made the decision to close the program effective March 31, 2013. New admissions to the program 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.

#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

Statutory Authority: Mental Hygiene Law Sections 7.09 and 31.04

Assessment of Public Comment: None received.

Justification: The Office has determined that the continuation of this regulation without modification is necessary to ensure compliance criteria for certain outpatient programs in order for those programs to receive supplemental Medical Assistance reimbursement.

#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

Statutory Authority: Mental Hygiene Law Sections 7.09, 43.02(c); Social Services Law Section 364(3)

Assessment of Public Comment: None received.

Justification: The Office has determined that the continuation of

this regulation without modification is necessary 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.

#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

Statutory Authority: Mental Hygiene Law Sections 7.09 and 43.02

Assessment of Public Comment: None received.

Justification: The Office has determined that the continuation of this regulation without modification is necessary 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.

#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

Statutory Authority: Mental Hygiene Law Sections 7.09 and 31.04

Assessment of Public Comment: None received.

Justification: The Office has determined that the continuation of this regulation without modification is necessary to clarify requirements pertaining to restraint and seclusion.

#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

Statutory Authority: Mental Hygiene Law Sections 7.09 and 43.02

Assessment of Public Comment: None received.

Justification: The Office has determined that the continuation of this regulation without modification is necessary to provide reasonable and adequate reimbursement to efficiently-operated programs.

#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

Statutory Authority: Mental Hygiene Law Sections 7.09 and 43.02

Assessment of Public Comment: None received.

Justification: The Office has determined that the continuation of this regulation without modification is necessary to implement standards to assess interest payments on overdue repayment plans for ineligible expenses and unreported income.

#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

Statutory Authority: Mental Hygiene Law Sections 7.09 and 31.04

Assessment of Public Comment: None received.

Justification: The Office has determined that the continuation of this regulation without modification is necessary to access Federal Medicaid program dollars to offset State aid funding of various community support program services.