

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 2013 by the Office of Mental Health (Office). These rules had been adopted during the calendar years 2008, 2003 and 1998. Notice that a review of these regulations would be conducted and that public comment would be accepted until May 1, 2013 was published in the March 6, 2013 State Register. All Part and Section references are to Title 14 of the New York Codes, Rules and Regulations.

#OMH-42-07-00001-A Child and Family Clinic Plus Program. Proposed in State Register on October 17, 2007; Adopted January 9, 2008.

Action: Amendment of 14 NYCRR Part 587.

Statutory Authority: Mental Hygiene Law Sections 7.09 and 31.04.

Assessment of Public Comment: None received.

Justification: The amendments established the Child and Family Clinic Plus Program. In recent years, the program has changed, as have the regulations pertaining to clinic treatment for children and adults. 14 NYCRR Part 599 was promulgated in October 2010, and superseded 14 NYCRR Parts 587, 588 and 592 as related to clinic treatment services operated by or under the auspices of the Office. While no longer formally in existence, the fundamental principles and goals of the Child and Family Clinic Plus Program have been infused into the regulations found at Part 599.

#OMH-46-07-00001-A Comprehensive Outpatient Programs. Proposed in State Register on November 14, 2007; Adopted January 30, 2008.

Action: Amendment of 14 NYCRR Parts 588 and 592.

Statutory Authority: Mental Hygiene Law Sections 7.09, 31.04 and 43.02; Social Services Law Sections 364(3) and 364-a; Chapter 54 of the Laws of 2006.

Assessment of Public Comment: None received.

Justification: The Office has determined that continuation of this regulation without modification is necessary because the rule equalizes comprehensive outpatient programs (COPS) and non-COPS funding. The establishment of this initiative was required by the enacted 2006-2007 State Budget. Current regulations reflect the intent of this rule making, although amendments were made in subsequent years to reflect rate changes.

#OMH-29-07-00014-A Personalized Recovery Oriented Services (PROS). Proposed in State Register on July 18, 2007; Adopted February 6, 2008.

Action: Repeal of 14 NYCRR Part 512 and addition of a new 14 NYCRR Part 512.

Statutory Authority: Mental Hygiene Law Sections 7.09, 31.04, 41.05, 43.02(b) and (c); Social Services Law Sections 364(3) and 364-a(1).

Assessment of Public Comment: None received.

Justification: The Personalized Recovery Oriented Services (PROS)

program assists individuals in recovering from the disabling effects of mental illness. 14 NYCRR Part 512 applies to any provider of service that has been certified to operate or proposes to operate a PROS program that must be certified by the Office. The Office has determined that continuation of this regulation without modification is necessary because the regulations establish provisions governing the PROS program.

#OMH-51-07-00004-A Communication and Patient Visiting Rights. Proposed in State Register on December 19, 2007; Adopted February 27, 2008.

Action: Repeal 14 NYCRR Part 21 and amend 14 NYCRR Part 527.

Statutory Authority: Mental Hygiene Law Sections 7.09, 33.02 and 33.05.

Assessment of Public Comment: None received.

Justification: The Office has determined that continuation of this regulation without modification is necessary to clarify the standards governing visiting and communication rights of residents in facilities under the Office's jurisdiction.

#OMH-20-08-00026-A Rights of Patients. Proposed in State Register on May 14, 2008; Adopted July 23, 2008.

Action: Amendment of 14 NYCRR Part 527.

Statutory Authority: Mental Hygiene Law Sections 7.07, 7.09, Section 33.02, Article 33; Public Health Law Article 29-C; Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508, Sections 42-6 and 4751).

Assessment of Public Comment: None received.

Justification: The Office has determined that continuation of this regulation without modification is necessary to ensure that provisions of this Part remain applicable to persons confined/committee to secure treatment facilities operated by the Office as defined in Mental Hygiene Law Section 10.03. The rule clarifies that such persons are afforded the same rights to object to care and treatment as non-sex offenders who are committed to hospitals.

#OMH-27-08-00002-A Placement or Transfer of Patients. Proposed in State Register on July 2, 2008; Adopted September 10, 2008.

Action: Amendment of 14 NYCRR Part 540.

Statutory Authority: Mental Hygiene Law Section 7.09; Criminal Procedure Law Section 730.40.

Assessment of Public Comment: None received.

Justification: The Office has determined that continuation of this regulation without modification is necessary to make clear the provisions pertaining to transfer or placement of patients committed to the custody of the Commissioner of Mental Health pursuant to CPL Article 730.

#OMH-31-08-00011-A Operating Certificates. Proposed in State Register on July 30, 2008; Adopted October 8, 2008.

Action: Amendments of 14 NYCRR Parts 573, 580, 582 and 584.

Statutory Authority: Mental Hygiene Law Sections 7.09 and 31.04(a).

Assessment of Public Comment: None received.

Justification: The Office has determined that the regulation shall continue without modification to continue to allow the issuance of operating certificates with a three-year duration to certain providers of service.

#OMH-31-08-00012-A Adjudicatory Proceedings. Proposed in State Register on July 30, 2008; Adopted October 8, 2008.

Action: Amendment of 14 NYCRR Part 503.

Statutory Authority: Mental Hygiene Law Sections 7.07, 7.09, 31.16, 31.17; Article 3 of the State Administrative Procedure Act.

Assessment of Public Comment: None received.

Justification: The rule making eliminated a procedural step in the hearing officer process that was determined to be unnecessary and duplicative. Continuation of this regulation without modification, therefore, is necessary to avoid inclusion of a procedural step that does not add value to the process and could ultimately result in delays, during which regulatory violations could persist, to the possible detriment of the civil and personal rights of persons for whom the Office is legally responsible.

#OMH-18-08-00003-A Waiver Authority. Proposed in State Register on April 30, 2008; Revised Rule Making in State Register on October 22, 2008; Adopted December 24, 2008.

Action: Amendment of 14 NYCRR Part 501.

Statutory Authority: Mental Hygiene Law Sections 7.09, 31.01, 31.04.

Assessment of Public Comment: None received.

Justification: The Office has determined that the continuation of this regulation without modification is necessary to enable the Commissioner of Mental Health to waive, on a case-by-case basis, regulatory requirements for purposes of testing innovative programs that may increase the efficiency and effectiveness of operations or providing additional flexibility to meet local service needs while maintaining program quality and integrity. This waiver provision encourages innovated approaches to service delivery and, in addition, provides the Office with the ability to assess the need for regulatory amendments on a statewide basis.

#OMH-15-03-00005-A Operation of Residential Treatment Facilities for Children and Youth. Proposed in State Register on April 16, 2003; Adopted September 3, 2003.

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). 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, 2002, 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, 2003. Therefore, the amendment was required to permit the continued necessary increase in RTF capacity until September 30, 2003. 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-26-03-00008-A Outpatient Programs. Proposed in State Register on July 2, 2003; Adopted December 10, 2003.

Action: Amendment of Parts 588 and 592 of Title 14 NYCRR.

Statutory Authority: Mental Hygiene Law Sections 7.09(b), 31.04(a), 41.13(a)(3), 41.15(a), 43.02(a); Social Services Law Sections 364(3) and 364-a(1); Chapter 54 of the Laws of 2001, the enacted budget for New York State Fiscal Year 2001-2002, and Chapter 54 of the Laws of 2002, the enacted budget for Fiscal Year 2002-2003.

Assessment of Public Comment: None received.

Justification: The Office has determined that continuation of this regulation without modification is necessary to allow for the conversion of the net deficit financing for intensive psychiatric rehabilitation treatment (IPRT) programs and partial hospitalization programs, to allow for adjustments in the comprehensive outpatient programs (COPS) rates, and increase the community support program unit of service ceiling. The changes allowed providers to achieve efficiencies in the operation of their outpatient treatment programs without a need for a reduction of services. Parts 588 and 592 have been amended several times since 2003, including as referenced above in #OMH-46-07-00001-A. Most recently, both of these Parts were amended in December 2012, to increase the Medicaid fees paid to Partial Hospitalization Programs. That rule clarified that the increase in Medicaid fees reflected the inclusion of all COPS and Medicaid Disproportionate Share funding previously attached to Partial Hospitalization Programs, since the Center for Medicare and Medicaid Services has mandated COPS funding to cease effective October 1, 2013.

#OMH-41-03-00003-A Medical Assistance Payment for Outpatient Programs. Proposed in State Register on October 15, 2003; Adopted December 24, 2003.

Action: Amendment of Part 588 of Title 14 NYCRR.

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

Assessment of Public Comment: None received.

Justification: The regulation was needed to increase the Medicaid rate schedule associated with outpatient programs licensed under Article 31 of the Mental Hygiene Law consistent with the enacted 2002-2003 State budget. Since 2003, there have been a number of amendments to this Part to reflect rate adjustments that were made as a result of the enacted State budget.

#OMH-11-97-00023-A Rights of Patients. Adopted: January 7, 1998.

Action: Amendment to Part 527 of Title 14 NYCRR.

Statutory Authority: Mental Hygiene Law Sections 7.09(i) and 31.04(a).

Assessment of Public Comment: None received.

Justification: The Office has determined that continuation of this regulation without modification is necessary because it serves to facilitate the ability of non-English speaking persons seeking or receiving services in facilities licensed or operated by the Office to have full access to mental health services.