

RULE REVIEW

Office of Mental Health Rule Review – 2010, 2005 and 2000

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 (OMH) hereby gives notice of rules which were adopted by the agency during the calendar years 2010, 2005, and 2000.

The public is invited to review and comment on the continuation or modification of the rules listed below. Comments must be submitted in writing and received within 45 days of the date of publication of this Notice. Comments should be submitted 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-45-09-00008-A Personalized Recovery-Oriented Services (PROS). Proposed in State Register on November 10, 2009; Adopted January 27, 2010.

Purpose: Amendment of Part 512 of Title 14 NYCRR to modify the PROS registration, documentation and program standards, and include the methodology for calculating capital add-on.

Analysis of Need: The existing PROS regulations included a stringent registration process, rigorous documentation requirements, and specific programmatic decisions reflecting clinical practice at that time. The changes included in this regulatory amendment were the result of feedback from PROS providers, as well as evaluation of operational PROS programs. The amendments included:

- Modification of the PROS registration process to include “real-time registration,” thereby eliminating certain registration and documentation requirements and effectively reducing costs to PROS providers and OMH;
- Reduction of documentation requirements to be consistent with other outpatient programs;
- Elimination of provisions with respect to payment disallowance for certain groups exceeding a specific number of participants;
- Reduction of the number of hours per week as the minimum required for ongoing rehabilitation and support (ORS);
- Change in methodology related to the calculation of capital costs;
- Increase in monthly base rates consistent with 2008-2009 State Budget.

The PROS regulation has been amended several times over the past few years, the impetus of which often was the result of feedback from providers of services. The amendments should remain without modification.

Legal Base: Mental Hygiene Law Sections 7.09(b), 31.04(a), 43.02(a) and (b); Social Services Law Sections 364(3) and 364-a(1).

#OMH-52-09-00005-A Certification of Relief from Disabilities Related to Firearms Possession. Proposed in State Register on December 30, 2009; Adopted March 10, 2010.

Purpose: Addition of a new Part 543 of Title 14 NYCRR to establish an administrative “certificate of relief from disabilities process” pursuant to Federal law.

Analysis of Need: The regulation established the relief from disabilities program by which a person who is disqualified from purchasing a firearm due to an involuntary commitment can seek to have that disqualification removed. As this process is required under the Federal National Instant Criminal Background Check System (NICS) Improvement Amendment Act of 2007 and Public Law 110-180, Section 105, which amended the Federal Brady Handgun Violence Prevention Act of 1993, the regulation should remain without modification.

Legal Base: Mental Hygiene Law Sections 7.09(b) and (j).

#OMH-15-10-00011-A Rates of Reimbursement – Hospitals Licensed by the Office of Mental Health. Proposed in State Register on April 14, 2010; Adopted June 23, 2010.

Purpose: Amendment of Part 577 of Title 14 NYCRR to reduce the growth of Medicaid reimbursement for licensed Article 31 private psychiatric hospitals.

Analysis of Need: The regulation removed the 2010 trend factor of 2.5 percent in developing the 2010 per diem Medicaid rates for Article 31 private psychiatric hospitals, effective January 1, 2010. Under the Commissioner’s authority, normally OMH trends base year’s costs forward two years to the rate year by using two annual trend factors (representing a trend factor for the year preceding the rate year and another trend factor for the rate year). This amendment clarified that, for the 2010 rate year, OMH would not use the 2010 trend factor and would only use the 2009 trend factor of 3.8 percent. This action was consistent with the elimination of the inflationary adjustments and trends applied to rates for community mental health programs in 2009-2010, and was made in accordance with the 2009-2010 enacted Deficit Reduction Legislation. The regulation was amended in 2012, 2013 and 2014 to implement rate freezes consistent with the enacted State Budget.

Legal Base: Mental Hygiene Law Sections 7.09 and 43.02.

#OMH-21-10-00010-A Operation of Psychiatric Inpatient Units of General Hospitals and Operation of Hospitals for Persons with Mental Illness. Proposed in State Register on May 26, 2010; Adopted: August 4, 2010.

Purpose: Amendment of Parts 580 and 582 of Title 14 NYCRR to update provisions that reflect outdated statutory references, nomenclature, practices or principles.

Analysis of Need: At the time of this amendment, the regulations governing psychiatric inpatient units of general hospitals and free-standing hospitals for persons with mental illness were significantly outdated. They did not reflect up-to-date statutory citations or amendments made over the previous ten years with respect to criminal history background checks, child abuse and neglect definitions, incident notification, or other applicable statutes. The regulations included an

outdated lexicon and contained several procedural requirements that had not been applicable for several years. As the amendment served to provide greater accuracy and clarify to providers of mental health services with respect to the standards under which they are expected to operate, the regulations should remain without modification.

Legal Base: Mental Hygiene Law Section 7.09; Social Services Law Section 412-a.

#OMH-11-10-00003-A Clinic Treatment Programs. Proposed in State Register on March 17, 2010; Adopted: July 14, 2010; Effective: October 1, 2010.

Purpose: Addition of new Part 599 of Title 14 NYCRR to establish standards for the certification, operation and reimbursement of clinic treatment programs serving adults and children.

Analysis of Need: The amendment replaced the previously existing requirements of Part 587 of Title 14 NYCRR and phased out the requirements of Parts 588 and 592 of Title 14 NYCRR insofar as they pertained to mental health clinic services. The regulation established the following:

- a redefined and more responsive set of clinic treatment services with greater accountability for outcomes;
- a redesigned financing structure that included Medicaid payment rates based on the efficient and economical provision of services to Medicaid clients;
- a HIPAA-compliant procedure based payment system with modifiers to reflect variations in costs;
- provisions for indigent care.

In the four years since 14 NYCRR Part 599 was adopted as final, OMH has amended its clinic regulations on several occasions based on provider feedback. As this Part establishes the standards for certification, operation and reimbursement of OMH-licensed clinics serving adults and children, the Part must remain in effect.

Legal Base: Mental Hygiene Law Sections 7.09, 31.02, 31.04, 31.06, 31.07, 31.09, 31.11, 31.13, 31.19, 43.01, 43.02, Article 33; Social Services Law Sections 364, 364-a and 364-j, Title XIX of the Federal Social Security Act.

#OMH-12-05-00002-A Residential Treatment Facilities for Children and Youth. Proposed in State Register on March 23, 2005; Adopted June 8, 2005.

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, OMH 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, 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, an amendment was required to permit the continued necessary increase in RTF 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 2013 extends the expiration date until September 30, 2016.

Legal Base: Mental Hygiene Law Sections 7.09, 31.04 and 31.26.

#OMH-04-05-00004-A Pre-Admission Certification for Residential Treatment Facilities for Children and Youth. Proposed in State Register on January 26, 2005; Continued July 13, 2005; Adopted August 31, 2005.

Purpose: Amendment of Part 583 of Title 14 NYCRR to revise the pre-admission certification process.

Analysis of Need: Chapter 947 of the Laws of 1981 authorized the establishment of Residential Treatment Facilities (RTFs). The legislation established procedures for admission to RTFs, designated pre-admission certification committees (PACC) to carry out these procedures, and provided for advisory boards to the PACC. The

purpose of the PACC is to ensure uniform access to RTFs for children and youth, regardless of the current placement or source of referral of an individual child. The amendments improved the operation of the PACC by:

- Extending the period of time after which the PACC must reconfirm its determination of eligibility of a child awaiting admission to a RTF from 45 days to 60 days. It required that this reconfirmation include a request for an update of the child's status, including the child's clinical status, current placement and willingness and ability to be admitted if offered a placement. It further mandated that the PACC's decision be unanimous, be made in writing, and include the physician's signature.

- Amending eligibility requirements for children who are temporarily unavailable. If a child, who had been found eligible for RTF placement, became unavailable for such admission for a period of less than 30 days, then the child's eligibility is considered temporarily suspended. The child may then be restored to eligible status on the date such temporary suspension ends.

- Setting forth the circumstances under which the PACC must decertify a child, who had been previously certified as eligible for placement, from that eligibility status and related notice requirements regarding this decision.

As the amendments were needed to improve management of the RTF wait list and help to ensure that RTF case managers have the most current information concerning a child's eligibility and mental health needs, the regulation should remain without modification.

Legal Base: Mental Hygiene Law Sections 7.09, 31.04 and 31.26

#OMH-09-05-00003-A Personalized Recovery-Oriented Services. Proposed in State Register on March 2, 2005; Continued August 24, 2005; Adopted December 21, 2005.

Purpose: Addition of a new 14 NYCRR Part 512 to establish standards for personalized recovery-oriented services.

Analysis of Need: The rule established a new licensed program category for Personalized Recovery-Oriented Services (PROS) programs. The purpose of the PROS program is to assist individuals in their recovery from the disabling effects of mental illness through the coordinated delivery of a customized array of rehabilitation, treatment and support services. The regulation has been amended several times since it was adopted in 2005. As the Part applies to any provider of service that has been licensed to operate, or proposes to operate a PROS program that must be licensed by OMH, the regulation must remain in effect.

Legal Base: Mental Hygiene Law Sections 7.09, 31.04, 41.05, 43.02; Social Services Law Sections 364(3) and 364a(1).

#OMH-16-00-00001-A Operation of Outpatient Programs and Operation of Residential Programs for Adults. Proposed in State Register on April 19, 2000; Adopted September 6, 2000.

Purpose: Amendment of Parts 587 and 595 of Title 14 NYCRR to add provisions to facilitate the implementation of the provisions of Kendra's Law.

Analysis of Need: Kendra's Law established a system for assisted outpatient treatment (AOT), under which courts are authorized to issue orders requiring persons who meet the criteria for AOT to participate in treatment. The purpose of the regulatory amendments was to facilitate the implementation of Kendra's Law by requiring providers of service to give priority access to individuals enrolled in assisted outpatient treatment programs and requiring providers of service to notify an individual's case manager and director of the assisted outpatient treatment program of the discharge of an individual who is also enrolled in an assisted outpatient treatment program.

Legal Base: Mental Hygiene Law Sections 7.09, 31.04; Chapter 408 of the Laws of 1999.