

**Economic and Technological Feasibility:**  
There are no economic or technological impediments to the rule changes.

**Minimizing Adverse Impact:**  
This regulation is consistent with the existing responsibilities nursing homes and ACFs have to maintain the health and safety of residents, ensure sufficient staffing levels, and ensure staff are free from communicable diseases. Therefore, any adverse impacts are expected to be minimal and are outweighed by the regulation’s health and safety benefits to residents and staff.

**Rural Area Participation:**  
Due to the urgent need to ensure ACF and NH staff and residents are vaccinated as soon as possible given the seriousness of the COVID-19 virus on this population, facilities located in rural areas were not directly consulted. However, the Department will notify covered entities located in rural areas of the existence of these regulations and the opportunity to submit comments or questions to the Department.

**Job Impact Statement**

A Job Impact Statement for these regulations is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial adverse impact on jobs and/or employment opportunities.

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## Office of Mental Health

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### PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

**Relating to the Certification, Operation and Reimbursement of Clinic Treatment Programs Serving Adults and Children**

**I.D. No.** OMH-23-22-00021-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

**Proposed Action:** Amendment of Part 599 of Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, sections 7.09, 31.02, 31.04, 31.06, 31.07, 31.09, 31.11, 31.13, 31.19, 41.13, 43.01; Social Services Law, sections 364, 364-a, 364-j and 365-m

**Subject:** Relating to the certification, operation and reimbursement of clinic treatment programs serving adults and children.

**Purpose:** To align such program with the State Plan Amendment.

**Substance of proposed rule (Full text is posted at the following State website: [https://omh.ny.gov/omhweb/policy\\_and\\_regulations/](https://omh.ny.gov/omhweb/policy_and_regulations/)):** The Office of Mental Health propose amendments to Part 599 of Title 14. In November 2021, CMS approved moving clinic into the Medicaid Rehabilitative Services (“rehab option”) in the State Plan Amendment, requiring several amendments to Part 599. Services covered under the “Rehab Option” provide a more flexible benefit than other services generally used for mental health services.

The proposed rule in summary:

1. Renames Clinic to Mental Health Outpatient Treatment and Rehabilitative Services Programs and removes outdated terms and provisions.

2. Adds Peer/Family Support Services to regulation:

- Added peer staffing definitions including certified peer specialists, credentialed family peer advocates and credentialed youth peer advocates who are qualified by personal experience and certified or provisionally certified.

- Defined Peer and Family Peer Recovery Support Services to mean services for adults and children/youth, including age-appropriate psychoeducation, counseling, person-centered goal planning, modeling effective coping skills, and facilitating community connections and crisis support to reduce symptomology and restore functionality. Family Peer Recovery Support Services also include engagement, bridging support, parent skill development, and crisis support for families caring for a child who is experiencing social, emotional, medical, developmental, substance use and/or behavioral challenges in their home, school, placement, and/or community to promote recovery, self-advocacy, and the development of natural supports and community living skills

- Provides an allowance for unlimited number of preadmission Peer/Family Support Services for engagement into clinic and such services are not counted towards the 30 visit threshold reduction of reimbursement

2. Provides off-site visits as allowable for all individuals receiving clinic services:

- Defines Off-Site Location as a location at which services are delivered. Locations including but not limited to the community, or the individual’s place of residence. The location in which the service is provided is determined by the individual’s needs and goals documented in the individual’s record.

- Adds requirements for policies and procedures for off-site locations including safety protocols.

- States that off-site services shall be provided in settings that are conducive to meeting treatment goals and objectives, be accommodating to the conditions and needs of those being served, be safe and accessible for all, and assure privacy for the delivery of services.

- Continues 150% reimbursement for all offsite locations.

3. Incorporates Intensive outpatient Program (IOP) in regulation, eliminating the need for waivers:

- Mental Health Outpatient Treatment and Rehabilitative Services Programs may obtain prior approval from the Office of Mental Health to provide Intensive Outpatient Program (IOP). IOP means providing additional and intensive outpatient services to individuals who may benefit from more intensive, time-limited treatment.

- Added IOP under service level needing OMH approval.

- Changed Clinic Based IOP to just IOP due to clinic name change.

4. Adds permanent rounding for services:

- Aligns with current Public Health Emergency (PHE) allowance to continue post PHE.

- For group therapy, allows for the option of up to 40, and less than 60 minutes be used with a 30% reduction in reimbursement.

5. Co-enrollment for clinics:

- Allows an individual to receive service from two clinics, as long as it is not the same service on the same day.

**Text of proposed rule and any required statements and analyses may be obtained from:** Sara Paupini, Esq., Office of Mental Health, 44 Holland Avenue, Albany, NY 12229, (518) 474-1331, email: regs@omh.ny.gov

**Data, views or arguments may be submitted to:** Same as above.

**Public comment will be received until:** 60 days after publication of this notice.

**Regulatory Impact Statement**

1. Statutory Authority: Section 7.07(c) of the Mental Hygiene Law charges the Office of Mental Health with the responsibility for seeing that persons with mental illness are provided with care and treatment, and that such care, treatment and rehabilitation is of high quality and effectiveness.

Sections 7.09 and 31.04 of the Mental Hygiene Law grant the Commissioner of Mental Health the power and responsibility to adopt regulations that are necessary and proper to implement matters under their jurisdiction, and to set standards of quality and adequacy of facilities, equipment, personnel, services, records and programs for the rendition of services for adults diagnosed with mental illness or children diagnosed with emotional disturbance, pursuant to an operating certificate.

Sections 364 and 364-a of the Social Services Law give the Office of Mental Health responsibility for establishing and maintaining standards for medical care and services in facilities under its jurisdiction, in accordance with cooperative arrangements with the Department of Health.

Section 43.01 of the Mental Hygiene Law gives the Commissioner authority to set rates for outpatient services at facilities operated by the Office of Mental Health. Section 43.02 of the Mental Hygiene Law provides that payments under the medical assistance program for outpatient services at facilities licensed by the Office of Mental Health shall be at rates certified by the Commissioner of Mental Health and approved by the Director of the Budget.

2. Legislative Objectives: Articles 7 and 31 of the Mental Hygiene Law reflect the Commissioner’s authority to establish regulations regarding mental health programs. The proposed rule furthers the legislative policy of providing high quality outpatient mental health services to individuals with mental illness in a cost-effective manner. Part 599 of Title 14 NYCRR sets forth standards for the certification, operation and reimbursement of clinic treatment programs serving adults and children.

3. Needs and Benefits: The State is looking to provide more flexibility for Clinics by aligning clinic with the recently approved State Plan Amendment. These changes allow treatment to be provided with more of a person-centered approach, moving clinicians away from treating the chart, to treating the individual. The proposed rule will add Peer/Family Support Services and allow for an unlimited number of preadmission Peer/Family Support Services for engagement, which would not count towards the thirty visit threshold reduction of reimbursement. The proposed rule will add off-site visits as allowable for all individuals receiving clinic services and incorporate Intensive Outpatient Program (IOP) in regulation, eliminating the need for waivers. The rule also proposes adding permanent rounding for services, which aligns with the current Public Health Emergency (PHE) allowance, to continue post PHE. The rule as proposed will allow an individual to enter into co-enrollment for clinics by permitting

such individual to receive services from two clinics as long as it is not the same service on the same day.

4. Costs:

(a) Cost to State government: There will be costs associated with the addition of peer support services, but there is an anticipated savings from the addition of such services to Mental Health Outpatient Treatment and Rehabilitative Services (formerly known as Clinic). The estimated annual net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for State Fiscal Year 2020/2021 is \$1.1 million and \$4.2 million for State Fiscal Year 2021/2022. Any costs above are Medicaid eligible and shared with the Federal Government.

(b) Cost to local government: These regulatory amendments will not result in any additional costs to local government.

(c) Cost to regulated parties: These regulatory amendments will not result in any additional costs to those regulated parties.

5. Local Government Mandates: These regulatory amendments will not result in any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts.

6. Paperwork: No substantial increase in paperwork is anticipated as a result of the amendments to 14 NYCRR Part 599.

7. Duplication: These regulatory amendments do not duplicate existing State or federal requirements.

8. Alternatives: No alternatives were considered, as these amendments seek to conform regulations to the State Plan Amendment and CMS guidelines to ensure that clinics remains in compliance. Not conforming to the state plan amendment will cause confusion in the field regarding both service delivery and payment. Outpatient Mental Health Services are person-centered, recovery-oriented rehabilitative services designed to help individuals achieve and maintain recovery from mental health conditions by treating the symptoms of those conditions and restoring skills which have been lost due to the onset of mental illness and which are necessary for individuals to manage and cope with the symptoms and behaviors associated with mental health conditions and function successfully in the community. Medically necessary Outpatient Mental Health Services are those which are necessary to promote the maximum reduction of symptoms and/or restoration of an individual to their best age-appropriate functional level and are provided according to an individualized treatment plan.

9. Federal Standards: The regulatory amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance Schedule: This rulemaking will be effective upon publication of a Notice of Adoption in the State Register.

**Regulatory Flexibility Analysis**

No regulatory flexibility analysis is required pursuant to section 202-(b)(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose reporting, record keeping or other compliance requirements on small businesses or local governments.

**Rural Area Flexibility Analysis**

No rural area flexibility analysis is required pursuant to section 202-bb(4)(a) of the State Administrative Procedure Act. 14 NYCRR Part 599 will align the clinic program with the State Plan Amendment and provide for greater flexibilities. The proposed rule will not impose any adverse economic impact on rural areas; therefore, a Rural Area Flexibility Analysis is not necessary with this notice.

**Job Impact Statement**

The amendments to 14 NYCRR Part 599 are intended to provide regulatory relief to providers and allow flexibility in the delivery of mental health services to more accurately reflect the needs of recipients and standards of good clinical care. It is evident from the subject matter of this rule that it could only have a positive impact or no impact on jobs or employment, therefore a Job Impact Statement is not necessary with this notice.

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## Public Service Commission

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**PROPOSED RULE MAKING  
NO HEARING(S) SCHEDULED**

**Transfer of Arbor Hills' Assets and a Rate Proposal Regarding Investments Made by Liberty in the Arbor Hills System**

I.D. No. PSC-23-22-00022-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

**Proposed Action:** The Commission is considering a petition filed by Liberty Utilities (New York Water) Corp. (Liberty) and Arbor Hills Water Works (Arbor Hills) for the transfer of Arbor Hills' assets to Liberty and a rate proposal.

**Statutory authority:** Public Service Law, sections 4(1), 5(1)(f), 89-c(1), (10) and 89-h(1)

**Subject:** Transfer of Arbor Hills' assets and a rate proposal regarding investments made by Liberty in the Arbor Hills system.

**Purpose:** To determine if the transfer of Arbor Hills' assets and a rate proposal is in the public interest.

**Substance of proposed rule:** The Public Service Commission is considering a joint petition filed on May 6, 2022 by Liberty Utilities Corp. (Liberty) and Arbor Hills Water Works (Arbor Hills) for the transfer of Arbor Hills' water system assets to Liberty.

Arbor Hills provides metered water service to 66 customers in the Arbor Hills Development, located in the Town of Lewisboro, Westchester County. Pursuant to the Public Service Commission (the Commission) Order Appointing Temporary Operator in Case 16-W-0415, issued March 9, 2017, Liberty assumed the role of temporary operator of the Arbor Hills system. As the temporary operator, Liberty has taken over all daily operations and administrative oversight for the Arbor Hills system. Liberty has made significant repairs and improvements to the Arbor Hills system, with an estimated investment of \$1.5 million in, among other things, well repairs, service line replacements, meter replacements, and backup power. The joint petition forecasts the need to further invest \$2.925 million to meet water demand and to facilitate necessary treatment upgrades. Additionally, the joint petition notes that Liberty has under collected revenues versus operating expenses during its tenure as the temporary operator, with an approximate under collection of \$414,000.

The joint petition requests that Liberty be authorized to acquire the assets of Arbor Hills for \$25,000 and continue the provision of safe service, including making the necessary investments into the Arbor Hills system. The joint petition notes that the transfer of Arbor Hill's assets to Liberty would also enable Liberty to implement recovery mechanisms for its reasonable expenses associated with operating and improving the water system assets. Upon acquisition, the joint petition proposes that Liberty be authorized to convert the existing customers of Arbor Hills to a monthly billing system and implement a surcharge to collect the revenue shortfall of \$414,000. The joint petition specifies that Liberty would also create a regulatory asset/liability for any further under/over collections through the filing of its next rate case, which would adjust the recovery surcharge as necessary. The joint petition states that, upon approval of the transfer, the rates of Arbor Hills' existing customers (absent the proposed revenue recovery surcharge) would be frozen for at least two rate year periods, at which time those customers would be incorporated into Liberty's SA 1 territory and be subject to the rates of SA 1 in effect at that time.

The joint petition specifies that, as part of the transfer of Arbor Hills' assets to Liberty, Liberty would also acquire the Escrow Accounts of Arbor Hills, which have a total existing balance of \$64,000. The joint petition proposes that Liberty be authorized to use this balance towards its \$1.5 million regulatory asset for capital improvements made through June 30, 2021. The balance of capital investments made would be maintained in regulatory asset until Liberty's next rate filing. Finally, the joint petition proposes that all revenues, production costs, and property taxes associated with the Arbor Hills system be excluded from Liberty's reconciliation, earning sharing mechanism, customer service incentive, and utility plant in service targets. The joint petition states that these rate proposals would allow Liberty to provide service to Arbor Hills' existing customers while making necessary improvements to the system. The joint petition asserts that the transaction is contingent upon approval of these rate proposals.

The full text of the joint petition and the full record of the proceeding may be reviewed online at the Department of Public Service web page at [www.dps.ny.gov](http://www.dps.ny.gov). The Commission may adopt, reject or modify, in whole or in part, the action proposed and may resolve related matters.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact:** John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: [john.pitucci@dps.ny.gov](mailto:john.pitucci@dps.ny.gov)

**Data, views or arguments may be submitted to:** Michelle L. Phillips, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: [secretary@dps.ny.gov](mailto:secretary@dps.ny.gov)

**Public comment will be received until:** 60 days after publication of this notice.

**Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement**

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.