

Action taken: Notice of proposed rule making, I.D. No. CVS-24-24-00013-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on June 12, 2024.

Subject: Jurisdictional Classification.

Reason(s) for withdrawal of the proposed rule: The proposed rule making was submitted twice in error.

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

Jurisdictional Classification

I.D. No. CVS-27-24-00011-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To delete positions from the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Health under the subheading "Helen Hayes Hospital," by decreasing the number of positions of Dental Hygienist from 8 to 7, Dietitian 1 from 7 to 6, Hospital Patient Services Clerk 1 from 43 to 30, Licensed Master Social Worker 2 from 17 to 16, Registered Nurse 1 (Rehabilitation) from 164 to 155, Senior Physical Therapist from 29 to 23, and Speech Language Pathologist 2 from 28 to 27.

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov

Data, views or arguments may be submitted to: Eugene Sarfoh, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: public.comments@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-24-00004-P, Issue of January 3, 2024.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-24-00004-P, Issue of January 3, 2024.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-24-00004-P, Issue of January 3, 2024.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-24-00004-P, Issue of January 3, 2024.

Department of Health

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

Contingent Reserve Requirements for Managed Care Organizations (MCOs)

I.D. No. HLT-27-24-00001-P

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

Proposed Action: Amendment of section 98-1.11(e) of Title 10 NYCRR.

Statutory authority: Public Health Law, section 4403(2)

Subject: Contingent Reserve Requirements for Managed Care Organizations (MCOs).

Purpose: Maintains the contingent reserve requirement at 7.25% through 2025 applied to the Medicaid Managed Care, HIV SNP and HARPs programs.

Text of proposed rule: Pursuant to the authority vested in the Commissioner of Health by section 4403(2) of the Public Health Law, subparagraph (ii) of paragraph (1) of subdivision (e) of section 98-1.11 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, to be effective upon publication of the Notice of Adoption in the New York State Register, to read as follows:

Subparagraph (ii) of paragraph (1) of subdivision (e) of section 98-1.11 is amended to read as follows:

(ii) Notwithstanding the provisions of subparagraph (i) above, the contingent reserve applicable to net premium income generated from the Medicaid Managed Care, Health and Recovery Plans (HARPs) and HIV SNP programs shall be:

- (a) 7.25 percent of net premium income for 2011;
- (b) 7.25 percent of net premium income for 2012;
- (c) 7.25 percent of net premium income for 2013;
- (d) 7.25 percent of net premium income for 2014;
- (e) 7.25 percent of net premium income for 2015;
- (f) 7.25 percent of net premium income for 2016;
- (g) 7.25 percent of net premium income for 2017;
- (h) 7.25 percent of net premium income for 2018;
- (i) 7.25 percent of net premium income for 2019;
- (j) 7.25 percent of net premium income for 2020;
- (k) 7.25 percent of net premium income for 2021;
- (l) 7.25 percent of net premium income for 2022;
- (m) 7.25 percent of net premium income for 2023.
- (n) [8.25] 7.25 percent of net premium income for 2024.
- (o) [9.25] 7.25 percent of net premium income for 2025.
- (p) [10.25] 8.25 percent of net premium income for 2026.
- (q) [11.25] 9.25 percent of net premium income for 2027.
- (r) [12.5] 10.25 percent of net premium income for 2028.
- (s) [12.5] 11.25 percent of net premium income for [calendar years after] 202[8]9.
- (t) 12.5 percent of net premium income for 2030.
- (u) 12.5 percent of net premium income for calendar years after 2030.

Text of proposed rule and any required statements and analyses may be obtained from: Katherine Ceroalo, DOH, Bureau of Program Counsel, Reg. Affairs Unit, Room 2438, ESP Tower Building, Albany, NY 12237, (518) 473-7488, email: regsqa@health.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.

This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the Register.

Regulatory Impact Statement

Statutory Authority:

Public Health Law section 4403(2) states the Commissioner may adopt and amend rules and regulations pursuant to the state administrative procedures act to effectuate the purposes and provisions of Article 44, which governs the certification and operational requirements of Managed Care Organizations (MCOs).

Legislative Objectives:

10 NYCRR 98 was extensively amended in 2005 and consistently thereafter, to implement the Medicaid Redesign Team initiatives consistent with Article 44 of the Public Health Law. This includes the temporary reduction of the contingent reserve requirements applied to premium revenues from the Medicaid Managed Care (MMC) and HIV Special Needs Plan (SNP) programs due to inclusion of various new benefits and populations into Medicaid Managed Care, the addition of the Health and Recovery Plans (HARPs) and the 2% reduction in premium (pursuant to the MRT initiative #6). These changes necessitated maintaining the reserves at the current level as the premium rates are not adequate to allow for a planned increase in the contingent reserve requirements. This proposed amendment will allow the contingent reserve for the Medicaid, HARP and HIV SNP lines of business to remain at 7.25% for two additional years (2024 and 2025).

Needs and Benefits:

The approved SFY 2011-2012 and SFY 2012-2013 NYS Budgets incorporated a proposal from the Medicaid Redesign Team that reduced the premium rates of MMC and HIV SNP managed care plans by 2%. This was accomplished by lowering the rate component for surplus/reserves from 3% to 1% effective April 1, 2011.

The actuarial firm employed by the Department of Health (DOH) must certify the actuarial soundness of the premium rates to Centers for Medicare and Medicaid Services (CMS). The reduction of the rate component for surplus/reserves by 2% would result in rates that were not actuarially sound, as such rates would be insufficient to support the contingent reserve requirement specified in § 98-1.11(e)(1). As a result, the contingent reserve requirement for Medicaid product lines was reduced from 10.5% to 7.25% of premium revenue. This change was implemented in regulations promulgated on an emergency basis effective July 7, 2011 and adopted permanently on February 15, 2012.

The new revision to 98-1.11(e) maintains the 7.25% contingent reserve requirement through calendar year 2025. This will permit DOH to maintain the 2% reduction in the premium rates and allow the State’s actuary to certify the actuarial soundness of the premium rates to CMS.

Costs:

The amended regulation imposes no compliance costs on state or local governments. There will be no additional costs incurred by the Health Department or by the MCOs.

Local Government Mandates:

The regulation imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

Paperwork:

Paperwork associated with filings to DOH or Department of Financial Services should be minimal and would be no more substantial than the current regulation requires.

Duplication:

These regulations do not duplicate, overlap, or conflict with existing State and federal regulations.

Alternatives:

Revisions to § 98-1.11(e) are needed to ensure the actuarial soundness of Medicaid Managed Care premium rates. No alternatives were considered since Medicaid premium rates are set by the State actuary and with a built-in profit of 1% which is not sufficient to accommodate reserve increases without jeopardizing the soundness of the rates.

Federal Standards:

The rule does not exceed any minimum standards of the Federal government for the same or similar subject area.

Compliance Schedule:

Managed care organizations should be able to comply with the proposed regulations upon publication of the Notice of Adoption.

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. The proposed amendment does not impose an adverse impact on facilities in rural areas, and it does not impose reporting, record keeping or other compliance requirements on facilities in rural areas.

Job Impact Statement

A Job Impact Statement for these amendments 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.

Statutory authority: Mental Hygiene Law, sections 7.09 and 31.04

Subject: Relating to Residential Treatment Facilities (RTF).

Purpose: To provide clarity and provide uniformity relating to RTF’s and to implement Chapter 58 of the Laws of 2020.

Text or summary was published in the March 13, 2024 issue of the Register, I.D. No. OMH-11-24-00017-P.

Final rule as compared with last published rule: No changes.

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

Revised Regulatory Impact Statement

1. Statutory authority: 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 his or her 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.

Section 31.26 of the Mental Hygiene Law provides for the establishment of the subclass of hospitals known as residential treatment facilities (RTF) for children and youth which provide active treatment under the direction of a physician for individuals who are under 21 years of age.

Article 31 of the Mental Hygiene law provides authority to issue operating certificates and to examine and inspect facilities to determine their suitability and operation.

2. Legislative objectives: Articles 7 and 31 of the Mental Hygiene Law reflect the Commissioner’s authority to establish regulations regarding mental health programs and section 9.51 authorizes the establishment of residential treatment facilities for children and youth. The proposed rule furthers the legislative policy of providing high quality mental health services to individuals with mental illness in a cost-effective manner.

3. Needs and benefits: The State is looking to streamline the admission process to residential treatment facilities to ensure that youth are accessing these services appropriately and to clarify the often complicated process for families and those supporting such youth. These changes update the language of the regulation, provide additional clarification and implement Chapter 58 of the Laws of 2020 and Mental Hygiene Law Section 9.51. These provisions were amended to remove the pre-admission certification committee process in favor of a more streamlined and centralized application process. Part 583 is added to provide for the establishment of procedures for accessing residential treatment facility services, a Medicaid eligible service; to articulate the criteria for determining eligibility of an individual to apply for admission or transfer to a specific residential treatment facility for children and youth; and to specify the procedures to be used in determining eligibility and priority for admission or transfer to residential treatment facility for children and youth. The proposed amendments to Part 584 would provide updated definitions for admission criteria, alternate care determination, continued stay criteria and adds definitions for designated mental illness, medical necessity and severe emotional disturbance. The rule would amend 584.7 to add “continued stay” criteria and replace reference to “admission criteria” with “medical necessity criteria” and revise language to indicate discharge criteria must at minimum indicate medical necessity criteria is no longer met. Section 584.8 (Admission, Transfer, Continued Stay and Discharge Policies and Procedures) is amended to remove references to Pre-Admission Certification Committee (PACC) and provide that RTF’s will admit youth with an authorization to access RTF services, provide “designations of priority” for admission, provide that notices from RTFs are required to be provided to family, referral source, OMH and youth’s county of origin, remove reference to 30 days turnaround requirement for evaluations for admission, provide that admission determinations must be based on the RTF’s admission criteria, provide for an exemption through OMH where the RTF declines the youth for admission for a reason not based on admission criteria and require a plan for discharge prior to the youth turning 22. Section 584.14 is amended to update the reference from “committee on handicap” to CSE. Section 584.16 is amended to remove reference to PACC and add reference to evaluation of eligibility, update reference from “committee on handicap” to CSE and provide an updated discharge goal. This section also establishes authorization for access to RTF services will occur by OMH or designee and must be obtained prior to RTF admission and requires medical necessity determination notification to county upon referral, outcomes of referral.

4. Costs:

(a) cost to State government: Costs will be minimal as the Office seeks to maximize existing regional staff to execute this role.

(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.

Office of Mental Health

NOTICE OF ADOPTION

Relating to Residential Treatment Facilities (RTF)

I.D. No. OMH-11-24-00017-A

Filing No. 524

Filing Date: 2024-06-12

Effective Date: 2024-07-03

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

Action taken: Repeal of Part 583; addition of new Part 583; amendment of Part 584 of Title 14 NYCRR.