

## Outpatient Services Licensed Under the Mental Hygiene Law

Effective date: 8/12/15

Pursuant to the authority vested in the Commissioner of Health by sections 26 and 111(a) of part H of chapter 59 of the laws of 2011, Part 86 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby amended by adding a new Subpart 86-12, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

### Subpart 86-12 – Outpatient Services Licensed Under the Mental Hygiene Law

Sec.

86-12.1 Utilization limits on OPWDD licensed clinics

86-12.2 Utilization limits on OMH licensed clinics

86-12.3 Utilization limits on OASAS licensed clinics

86-12.1 Utilization limits on OPWDD licensed clinics

For periods on and after April 1, 2011 Medicaid reimbursement rates for clinics licensed by the Office for People With Developmental Disabilities (“OPWDD”) shall be subject to the following:

(a) Definitions: As used in this section:

(i) "Clinic" shall mean a clinic treatment facility licensed by OPWDD pursuant to 14 NYCRR Part 679.

(ii) "Clinic visit". For services provided by a clinic for the period on and after April 1, 2011 through June 30, 2011, "clinic visit" shall have the same meaning such term has in 14 NYCRR Part 679 as in effect for such period, and for services provided by a clinic for the period on and after July 1, 2011, "clinic visit" shall have the same meaning such term has in 14 NYCRR Part 679 as in effect for such period.

(iii) "Monthly utilization threshold" shall be a monthly utilization standard defined in terms of an average monthly visit per patient served, as established by OPWDD based on peer norms.

(iv) "Reimbursement rate". For the period from April 1, 2011 through June 30, 2011, "reimbursement rate" shall mean the applicable fee as set forth in 14 NYCRR Part 679 as in effect for such period, and for any period on and after July 1, 2011, "reimbursement rate" shall mean the rate established in accordance with 14 NYCRR Part 679 for such period or periods.

(v) "Utilization review period" shall mean the 2009 calendar year.

(b) Service categories and corresponding monthly utilization thresholds are:

- (i) Nutrition/dietetics: 2.08
- (ii) Speech language pathology: 4.33
- (iii) Occupational therapy: 4.08
- (iv) Physical therapy: 5.25
- (v) Rehabilitation counseling: 3.25
- (vi) Individual psychotherapy: 3.08
- (vii) Group psychotherapy: 3.17

(c) For each service category identified in subdivision (b) of this section, OPWDD will annually calculate a monthly utilization rate for each clinic based on paid Medicaid claims for services rendered during the utilization review period. Service categories shall be identified by the procedure codes and clinician identifiers submitted on paid Medicaid claims. Visits associated with patients who received fewer than four visits within a service category shall be excluded from monthly utilization rate calculations. For utilization review periods beginning prior to July 1, 2011, OPWDD will use only the initial procedure code reported on the claim to calculate monthly utilization rates.

(d) When a clinic's calculated monthly utilization rate exceeds the monthly utilization threshold, OPWDD will calculate "excess visits" based on the following formula:

Excess Visits = (Clinic monthly utilization rate - Threshold Value) \* Recipient Months

(e) OPWDD will sum a clinic's excess visits across all service categories. OPWDD will calculate excess visits as a percentage of total paid visits during the utilization review period. The reimbursement rates of clinics with excess visits shall be reduced by a uniform percentage in accordance with the following:

<u>Excess Visits as a percentage of Total Paid Visits</u>	<u>Reduction</u>
15.1% or more	5.00%
Between 10.1% and 15%	4.25%
Between 5.1% and 10%	3.50%
Between 1% and 5%	2.75%
Less than 1%	0.00%

(f) For the period April 1, 2011 through March 31, 2012, OPWDD may waive the reimbursement rate reductions in this section in accordance with the provisions of section 26 of part H of chapter 59 of the laws of 2011, provided, however, that the waiver shall be subject to retroactive revocation upon a determination by OPWDD, in consultation with the Department, that the clinic has not complied with the terms of such waiver.

(g) The issuance of waivers as described in subdivision (f) of this section shall be subject to the following:

(i) In order to receive a waiver a clinic must submit to OPWDD a request for a waiver and a utilization reduction plan. OPWDD's decision on the waiver shall be based on

whether the clinic's utilization reduction plan shows a reduction in the clinic's planned state fiscal year 2011-2012 Medicaid visits by an amount equal to the paid visits in excess of the utilization thresholds and whether the clinic is operating in conformance with all applicable statutes, rules and regulations. For purposes of this section, a clinic's planned state fiscal year 2011-2012 visits cannot exceed its paid Medicaid visits in calendar year 2010.

(ii) OPWDD will compare the actual paid and planned state fiscal year 2011-2012 visits for each clinic granted a waiver. If a clinic fails to achieve the reduction in utilization in accordance with its utilization reduction plan, OPWDD will revoke the waiver and reduce the clinic's reimbursement rates for state fiscal year 2011-12 as computed in accordance with the provisions of subdivisions (a) through (e) of this section, provided, however, that such reduction computation shall incorporate and reflect any utilization reduction that the clinic did achieve while operating under the waiver.

86-12.2 Utilization limits on OMH licensed clinics. (a) Effective for services provided on and after April 1, 2011 Medicaid payments for outpatient mental health services provided in outpatient facilities licensed by the Office of Mental Health ("OMH") pursuant to article 31 of the Mental Hygiene Law shall reflect applicable provisions of regulations promulgated by OHM and shall be adjusted relative to 2009 service utilization and payment levels in accordance with the following:

(1) For persons 21 years of age or older, the thirty-first through fiftieth visit in a state fiscal year shall be subject to a 25% reduction in the otherwise applicable payment amount as computed in accordance with applicable provisions of article 31 of the Mental Hygiene Law or regulations promulgated thereunder.

(2) For persons 21 years of age or older, visits in excess of fifty visits in a state fiscal year shall be subject to a 50% reduction in the otherwise applicable payment amount as computed in accordance with applicable provisions of article 31 of the Mental Hygiene Law or regulations promulgated thereunder.

(3) For persons less than 21 years of age at the start of the state fiscal year, visits in excess of fifty visits in that state fiscal year shall be subject to a 50% reduction in the otherwise applicable payment amount as computed in accordance with applicable provisions of article 31 of the Mental Hygiene Law or regulations promulgated thereunder.

(4) Off-site visits, medical visits and crises visits, when billed under their applicable rate codes, shall be disregarded in computing the number of visits pursuant to paragraphs (1), (2) and (3) of this subdivision.

86-12.3 Utilization limits on OASAS licensed clinics. (a) Effective for services provided on and after April 1, 2011 Medicaid payments for outpatient alcoholism and substance abuse services provided in outpatient clinic facilities licensed by the Office of Alcoholism and Substance Abuse Services (“OASAS”) pursuant to article 32 of the Mental Hygiene Law shall reflect applicable provisions of regulations promulgated by OASAS and shall be adjusted relative to 2009 service utilization and payment levels in accordance with the following:

(1) The seventy-sixth through ninety-fifth visits in a state fiscal year shall be subject to a 25% reduction in the otherwise applicable payment amount as computed in accordance with applicable provisions of article 32 of the Mental Hygiene Law or regulations promulgated thereunder.

(2) Visits in excess of the ninety-five visits in a state fiscal year shall be subject to a 50% reduction in the otherwise applicable payment amount as computed in accordance with applicable provisions of article 32 of the Mental Hygiene Law or regulations promulgated thereunder.

## **REGULATORY IMPACT STATEMENT**

### **Statutory Authority:**

Section 26 of Part H of Chapter 59 of the Laws of 2011 authorizes the Commissioner of Health, in consultation with the Commissioners of OPWDD, OMH and OASAS, to promulgate regulations to establish methodologies to implement targeted Medicaid reimbursement rate reductions based on utilization thresholds. Section 111(a) of Part H of Chapter 59 of the Laws of 2011 provides that such regulations may be made effective retroactive to April 1, 2011.

### **Legislative Objective:**

Section 26 of Part H of Chapter 59 of the Laws of 2011 authorize revisions to Medicaid rates in a manner designed to reduce provider reimbursement for excessive or inappropriate utilization of certain services based on annual patient use in accordance with the Medicaid Redesign Team Proposal #26.

### **Needs and Benefits:**

Historically, over use and inappropriate use of these services has caused waste to the Medicaid system. These amendments are designed to discourage excessive and inappropriate utilization of services by establishing reimbursement methodologies for adjusting provider reimbursement in OPWDD, OMH, and OASAS certified clinics to reflect limitations based on annual patient visits. The benefits of these revised methodologies are to discourage overuse, reduce wasteful Medicaid cost, and increasing the effectiveness of the program by allocating money to needed services.

## **COSTS**

### **Costs for the Implementation of, and Continuing Compliance with this Regulation to the Regulated Entity:**

Implementation of and compliance with these regulations will impose no additional administrative costs on providers.

### **Costs to Local Governments:**

There will be no additional costs to local governments as a result of these amendments.

### **Costs to State Governments:**

There will be no additional costs to NYS as a result of these amendments. The gross Medicaid savings will be \$27M (OASAS: \$13M, OMH: \$12M, and OPWDD: \$2M).

### **Costs to the Department of Health:**

There will be no additional costs to the Department of Health as a result of these amendments.

### **Local Government Mandates:**

There are no local government mandates.

**Paperwork:**

There is no additional paperwork required of providers as a result of these amendments.

**Duplication:**

This regulation does not duplicate other existing state or federal regulations.

**Alternatives:**

These regulations are in conformance with the statutory mandates set forth in Section 26 of Part H of Chapter 59 of the Laws of 2011. Implementation of this statute requires the promulgation of these regulations.

**Federal Standards:**

This amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

**Compliance Schedule:**

The proposed amendment will become effective retroactive to April 1, 2011.

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## **REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESS AND LOCAL GOVERNMENTS**

### **Effect on Small Business and Local Governments:**

For the purpose of this regulatory flexibility analysis, small businesses were considered to be clinics certified under the Mental Hygiene Law by OPWDD, OMH and OASAS.

### **Compliance Requirements:**

No new reporting, record keeping or other compliance requirements are being imposed as a result of these rules.

### **Professional Services:**

No new or additional professional services are required in order to comply with the proposed amendments.

### **Economic and Technical Feasibility:**

Small businesses will be able to comply with the economic and technological aspects of this rule. The proposed amendments are intended to further reform the outpatient/ambulatory care fee-for-service Medicaid payment system with regard to clinics certified under the Mental Hygiene Law, including those with fewer than 100 employees.

**Compliance Costs:**

No initial capital costs will be imposed as a result of this rule, nor is there an annual administrative cost of compliance.

**Minimizing Adverse Impact:**

The proposed amendments apply to Medicaid reimbursement rates for clinics certified under the Mental Hygiene Law. These regulations and the Medicaid reimbursement rate revisions they implement are specifically mandated by sections 26 and 111(a) of part H of chapter 59 of the laws of 2011. The Department of Health considered approaches specified in section 202-b (1) of the State Administrative Procedure Act in drafting the proposed amendments and rejected them as inappropriate given that these reimbursement rate revisions are mandated in statute.

**Small Business and Local Government Participation:**

Local governments and small businesses were given notice of these proposals by their inclusion in the SFY 2011-12 enacted budget and the Department's issuance in the State Register of federal public notices concerning such proposals.

## RURAL AREA FLEXIBILITY ANALYSIS

### Effect on Rural Areas:

Rural areas are defined as counties with a population less than 200,000 and, for counties with a population greater than 200,000, includes towns with population densities of 150 persons or less per square mile. The following 43 counties have a population less than 200,000:

Allegany	Hamilton	Schenectady
Cattaraugus	Herkimer	Schoharie
Cayuga	Jefferson	Schuyler
Chautauqua	Lewis	Seneca
Chemung	Livingston	Steuben
Chenango	Madison	Sullivan
Clinton	Montgomery	Tioga
Columbia	Ontario	Tompkins
Cortland	Orleans	Ulster
Delaware	Oswego	Warren
Essex	Otsego	Washington
Franklin	Putnam	Wayne
Fulton	Rensselaer	Wyoming
Genesee	St. Lawrence	Yates
Greene		

The following 9 counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

**Compliance Requirements:**

No new reporting, record keeping, or other compliance requirements are being imposed as a result of this proposal.

**Professional Services:**

No new additional professional services are required in order for providers in rural areas to comply with the proposed amendments.

**Compliance Costs:**

No initial capital costs will be imposed as a result of this rule, nor is there an annual cost of compliance.

**Minimizing Adverse Impact:**

The proposed amendments apply to Medicaid reimbursement for certain services of clinics certified under the Mental Hygiene Law. The Department of Health considered approaches specified in section 202-bb (2) of the State Administrative Procedure Act in drafting the proposed amendments and rejected them as inappropriate given that the reimbursement rate revisions in question are mandated in statute.

**Opportunity for Rural Area Participation:**

Local governments and small businesses were given notice of these proposals by their inclusion in the SFY 2011-12 enacted budget and the Department's issuance in the State Register of federal public notices concerning such proposals.

## **JOB IMPACT STATEMENT**

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature and purpose of the proposed regulations, that they will not have a substantial adverse impact on jobs or employment opportunities.

## ASSESSMENT OF PUBLIC COMMENT

The Department received one set of comments during the public comment period from the New York City Department of Health and Mental Hygiene (“NYCDOHMH”).

**Comment:** The Department should consider a “phased in” approach to soften the fiscal impact on providers.

**Response:** As indicated in the regulatory impact statement, the intent of the utilization threshold procedure is to “discourage excessive and inappropriate utilization of services”. In accordance with social services law 365-a, Medicaid covers medically necessary care and services. Reimbursement of excessive services or those that represent inappropriate utilization would be inconsistent with statute. Therefore, a “phased in” implementation approach would not be appropriate.

**Comment:** Provider billing systems will need to be revised to accommodate the new utilization threshold payment guidelines. Providers will need time to revise their systems so that they are not financially at risk of having claims denied.

**Response:** Providers will not be required to revise their Medicaid billing systems for the utilization thresholds. Providers should submit claims as they normally do. Utilization threshold limits will be applied through post payment claim edits.

**Comment:** For purposes of utilization thresholds, complex care management should be disregarded when computing the number of visits to an OMH-licensed clinic.

**Response:** Case/care management is exempt from the utilization threshold visit calculation.