

Pursuant to the authority vested in the Commissioner of Health by section 201 of the Public Health Law and sections 363-a and 365-a of the Social Services Law, section 505.38 of Title 18 of the Official Compilation of Codes, Rules, and Regulations of the State of New York is added, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Section 505.38 is added to read as follows:

§ 505.38 Children's Behavioral Health and Health Services.

(a) *Purpose:* This section promotes the expansion of health and behavioral health services for children/youth under 21 years of age. The New York State Department of Health (DOH), the New York State Office of Mental Health (OMH), the New York State Office of Alcoholism and Substance Abuse Services (OASAS), and the New York State Office of Children and Family Services (OCFS) (the "State Agencies") shall designate licensed, certified or approved providers to deliver specifically defined services under the Medicaid program.

(b) *Services:* The following services shall be available to children and youth who are eligible for Medicaid, when provided in accordance with the provisions of this section.

(1) *Crisis Intervention (CI)* - CI services are provided to a child/youth under age 21, and his/her family/caregiver, who is experiencing a psychiatric or substance use (behavioral health) crisis, and are designed to:

- (i) Interrupt and/or ameliorate the crisis experience
- (ii) Include an assessment that is culturally and linguistically sensitive
- (iii) Result in immediate crisis resolution and de-escalation

- (iv) Develop a crisis plan

(2) *Other Licensed Practitioner:*

(i) A non-physician licensed behavioral health practitioner (NP-LBHP) is an individual who is licensed and acting within his or her lawful scope of practice under Title VIII of the Education Law and in any setting permissible under State law.

(ii) Individual Staff Qualifications:

(a) NP-LBHPs include the following practitioners; each is permitted to practice independently within his or her scope of practice:

- (1) licensed psychoanalysts;
- (2) licensed clinical social workers (LCSWs);
- (3) licensed marriage and family therapists; and
- (4) licensed mental health counselors.

(b) NP-LBHPs also include licensed master social workers (LMSWs) under the supervision of licensed clinical social workers (LCSWs), licensed psychologists, or psychiatrists.

(3) *Community Psychiatric Support and Treatment (CPST):* CPST services are goal-directed supports and solution-focused interventions intended to achieve identified goals or objectives as set forth in the child's/youth's individualized treatment plan. CPST is designed to provide community-based services to children or youth and their families or caregivers who may have difficulty engaging in formal office settings, but can benefit from community based rehabilitative services. CPST allows for delivery of services within a variety of permissible settings including community locations

where the child/youth lives, works, attends school, engages in services (e.g. provider office sites), and/or socializes. This includes the implementation of Evidence Based Practices with approval by the State Agencies.

(4) *Psychosocial Rehabilitation (PSR)*: PSR services are provided to children or youth and their families or caregivers to implement interventions outlined in the individualized treatment plan to compensate for or eliminate functional deficits and interpersonal and/or environmental barriers associated with a child/youth's behavioral health needs. The intent of PSR is to restore, rehabilitate, and support a child/youth's functional level as much as possible and as necessary for the integration of the child/youth as an active and productive member of their community and family with minimal ongoing professional interventions. Activities included must be task oriented and intended to achieve the identified goals or objectives as set forth in the child/youth's individualized treatment plan.

(5) *Family Peer Support (FPS)*: FPS services are an array of formal and informal services and supports provided to families caring for/raising a child/youth who is experiencing social, emotional, developmental, medical, substance use, and/or behavioral challenges in their home, school, placement, and/or community. FPS services provide a structured, strength-based relationship between a credentialed Family Peer with relevant lived experience as determined appropriate by the State Agencies as defined in subdivision (a) of this section and the parent/family member/caregiver for the benefit of the child/youth. Activities must be task oriented and intended to achieve the identified goals or objectives as set forth in the child/youth's individualized treatment plan.

(6) *Youth Peer Support and Training (YPST)*: YPST services are youth formal and informal services and supports provided to youth who are experiencing social, emotional, medical, developmental, substance use, and/or behavioral challenges in their home, school, placement, and/or community centered services. These services provide the training and support necessary by a credentialed youth peer with relevant lived experience as determined appropriate by the State Agencies as defined in subdivision (a) of this section to ensure engagement and active participation of the youth in the treatment planning process and with the ongoing implementation and reinforcement of skills learned throughout the treatment processes. YPST activities must be intended to develop and achieve the identified goals and/or objectives as set forth in the youth's individualized treatment plan. YPST services delivered are based on the individualized treatment plan developed by the licensed practitioner working with the youth.

(c) *Provider Qualifications*:

- (1) Any child serving agency or agency with children's behavioral health and health experience must have the necessary licensure, certification, designation, or approval from DOH, OMH, OASAS, or OCFS to provide the services authorized by this section.
- (2) Any licensed practitioner providing behavioral health or health services authorized under this section must work in a child serving agency or agency with children's behavioral health and health experience, as described in paragraph (1) of this subdivision.

- (3) Crisis Intervention practitioners must work in a child serving agency, or agency with children's behavioral health and health experience, that obtains or possesses a current license or authorization to provide crisis and/or crisis treatment services, consistent with the requirements of paragraph (1) of this subdivision.
- (4) Any organization seeking to provide any service authorized by this regulation and to serve the general population needing mental health services must be licensed or authorized to do so by OMH in addition to obtaining the licensure, certification, designation, or approval described in paragraph (1) of this subdivision.
- (5) Any organization seeking to provide any service authorized by this regulation and to serve the general population needing substance use disorder services must be certified, designated or authorized to do so by OASAS in addition to obtaining the licensure, certification, designation, or approval described in paragraph (1) of this subdivision.

(d) *Designation of Providers:*

- (1) As a prerequisite to providing any of the services authorized by this section, a provider must receive a designation from DOH, OMH, OASAS, or OCFS. Being designated to provide services authorized by this section is not a substitute for possessing any required State licensure, certification, authorization or credential, and any such designation may be conditioned upon obtaining or modifying a required licensure, certification, authorization or credential.
- (2) To be eligible for designation, a provider must submit an application on a form required by the State agencies and must:

- (i) Be enrolled in the Medicaid program prior to commencing service delivery;
- (ii) Be a qualified provider as described in subdivision (c) of this section and maintain its license, certification or approval with that state agency;
- (iii) Be in good standing according to the standards of each agency by which it is licensed, certified or approved;
- (iv) Be a fiscally viable agency;
- (v) Meet developed criteria as outlined in the Provider Designation Application guidance and form, including adequate explanation of how the provider meets such criteria; and
- (vi) Adhere to the Standards of Care described in the *Children's Health and Behavioral Health Services Transformation Medicaid State Plan Provider Manual for Children's BH Early and Periodic Screening and Diagnostic Testing (EPSDT) Services* which have been incorporated by reference in this Part and have been filed in the Office of the Secretary of State of the State of New York, the publication so filed being the document entitled: *Children's Health and Behavioral Health Services Transformation Medicaid State Plan Provider Manual for Children's BH Early and Periodic Screening and Diagnostic Testing (EPSDT) Services*, published in December, 2016, and any subsequent updates. This document incorporated by reference may be examined at the Office of the Department of State, 99 Washington Ave, Albany,

NY 12231 or obtained from the Department of Health, 99 Washington Ave, Albany, NY 12231.

- (3) A provider designated to provide services authorized by this section will be assigned a lead State agency (DOH, OASAS, OCFS or OMH), based on the primary population served, location, and indicated line of business on the provider application, which will be responsible, in collaboration with the other State agencies, for monitoring and oversight of the provider.
- (4) If a provider is designated to provide Community Support and Treatment services, it may seek approval of the lead State agency and DOH to utilize, in the provision of services, specified evidence-based techniques drawn from cognitive-behavioral therapy and/or other evidence based psychotherapeutic interventions.
- (5) Nothing contained herein shall authorize a provider to provide medical services, except as otherwise authorized by law.

(e) Rescinding a designation.

- (1) A provider who fails to comply with laws, regulations and policies may have its designation rescinded by the lead State agency, which will consult with the other State agencies before taking such action. The provider has 14 business days to appeal the action to the lead State agency. The lead State agency shall respond with a final decision within 14 business days of appeal.
- (2) A provider whose designation was rescinded may apply for redesignation pursuant to subdivision (d) of this section. The provider must show that it corrected the problems that led to the rescission. An on-site and/or desk evaluation may be conducted by the lead State agency prior to approving the redesignation request.

(f) *Reimbursement:* Reimbursement for children's behavioral health and health services must be in accordance with the rates established by the Department and approved by the Director of the Division of Budget.

REGULATORY IMPACT STATEMENT

Statutory Authority:

Social Services Law (SSL) section 363-a and Public Health Law section 201(1)(v) provide that the Department is the single State agency responsible for supervising the administration of the State's medical assistance ("Medicaid") program and for adopting such regulations, which shall be consistent with law, and as may be necessary to implement the State's Medicaid program. SSL section 365-a authorizes Medicaid coverage for specified medical care, services and supplies, together with such medical care, services and supplies as authorized in the regulations of the Department.

Legislative Objectives:

Section 365-a of the SSL requires Medicaid to pay for part or all of the cost of medical, dental, and remedial care, services, and supplies that are necessary to prevent, diagnose, correct or cure conditions that cause acute suffering, endanger life, result in illness or infirmity, interfere with a person's capacity for normal activity, or threaten some significant handicap.

Needs and Benefits:

The Children's Behavioral Health Medicaid Redesign Team Subcommittee made a recommendation in 2011 that the children's system needed improvement with respect to service access, funding and earlier intervention for children/families. These improvements, combined with transitioning services to Medicaid Managed Care, would fill gaps in services and produce better long term outcomes for children and families.

The proposed regulation would add a new section 505.38 to 18 NYCRR authorizing six new behavioral health and health services for Medicaid eligible children/youth under 21 years of

age: crisis intervention (CI); community psychiatric support and treatment (CPST); psychosocial rehabilitation (PSR); family peer support services (FPSS); youth peer support and training (YPST); and services of other licensed practitioners. The new services would be available to any Medicaid eligible child who meets medical necessity criteria. Adoption of the regulation would be contingent upon the receipt of approval from the Centers for Medicare and Medicaid Services to add these new services to New York's State plan for medical assistance.

Under the proposed regulation, the Office of Mental Health, Office of Alcoholism and Substance Abuse Services, and the Office of Children and Family Services would designate qualified programs, individuals, and/or organizations to deliver these new behavioral health and health services. Such a designation would not substitute for possessing any license, certificate or approval otherwise required by law in order to provide the service in question; nor would it allow the designee to provide medical services except as otherwise authorized by law.

The proposed regulation describes: the nature of the new services; the qualifications of providers eligible to furnish the services; the process by which the State agencies will designate qualified providers; the monitoring and oversight of designated providers; the rescission of designations of providers who fail to comply with applicable laws, regulations, and policies; and reimbursement for the services.

These new behavioral health and health services are intended to allow for earlier intervention for children experiencing behavioral health and physical health challenges, in order to address such challenges before there is a need for higher intensity, costlier services, and to promote home and community based living outcomes. Further, the services may be delivered in any setting in which children and families live, socialize and learn. By increasing community based interventions, New York will strengthen families' abilities to care for their own children

and will redistribute resources so that children and families receive the right services, at the right time, and in the right amount.

Costs

Costs to the Regulated Parties:

The parties affected by the proposed regulation would be any agency/provider that applies for a designation to provide one or more of the new Medicaid services. Once an agency/provider is designated, it must contract with Medicaid Managed Care Organizations (MCOs) in order to offer, provide, and bill for the services. There may be costs associated with ensuring that their agency has the appropriate Health Information Technology (HIT) systems in order to properly support health information management across computerized systems and the secure exchange of health information between consumers, providers, payers, and quality monitors. The agencies/providers will also need to ensure they have the appropriate billing technology to be able to appropriately bill the MCO for the services they provide.

Costs to the State Government:

The Department expects that the availability of the new behavioral health and health services will reduce the need for emergency room visits, inpatient hospitalizations, and costlier treatment modalities. In addition, some of the new services are currently paid for by Medicaid, but through waiver programs rather than as State plan services. Because of these offsets, the Department estimates that the annual State share cost of covering the new services, when fully implemented, will be \$33.6 million.

(Dollars in millions)

Proposal	2017-18 Impact		2018-19 Impact		Full Annual Impact	
	Gross	State	Gross	State	Gross	State
Six New SPA Services	\$50.2M	\$25.1M	\$141.2M	\$70.6M	\$200.8M	\$100.4M
Offsets for MA Savings/ Existing Services	(\$30.4M)	(\$15.8M)	(\$84.5M)	(\$44.7M)	(\$125.6)	(\$66.8M)
Net Costs for New Services	\$19.8M	\$9.2M	\$56.7M	\$25.9M	\$75.2M	\$33.6M

Cost Information and Methodology upon which the Cost Analysis is Based:

Other Licensed Practitioner (OLP) services:

Generally:

- Per day caps are 4.
- Efficiency percentages have been made consistent between on-site and off-site (25%) for all services.
- OLP Individual and group services are priced using the salary assumption of a licensed staff person (\$80,000).

Assessment Codes:

- Salary assumptions have increased for Doctors from \$160K to \$195K.
- Salary assumptions have decreased for Psychologists from \$100K to \$95K.
- Information gathered from DOL 2015 for NYS 2015 wage.
- OLP assessment procedure codes have been changed back to original codes (90791/90792).

Group:

- Every group size has its own rate code with specific rates for group sizes of 2, 3 or 4.

- Providers will bill one client in the group using the off-site rate code with the remaining clients being billed using the “on-site” rate code for the appropriate group size.

Psychosocial Rehabilitation (PSR), Community Psychiatric Support and Treatment (CPST), Family Peer Support (FPS), and Youth Peer Support and Training (YPST):

Generally:

- Per day caps have been increased from 4 to 6 (for PSR and CPST).
- Per day caps have been increased from 4 to 8 (for FPS and YPST).
- Efficiency percentages have been made consistent between on-site and off-site (25%) for all services.
- Individual and group services are priced using the salary assumption of a Bachelors level staff person (\$40,000).

Group:

- Every group size has its own rate code with specific rates for group sizes of 2, 3 or 4.
- Providers will bill one client in the group using the off-site rate code with the remaining clients being billed using the “on-site” rate code for the appropriate group size.

Local Government Mandates:

There are no associated local government mandates.

Paperwork:

Any agency/provider that wants to provide any of the new services must go through an application/designation process; to be eligible for designation, any child serving agency or agency with children’s behavioral health and health experience must have the necessary licensure, certification, designation, or approval from DOH, OMH, OASAS, or OCFS to provide the services authorized by the proposed regulation, and any practitioner providing the new

behavioral health or health services must operate within a child serving agency or agency with children's behavioral health and health experience that has such licensure, certification, designation, or approval.

Once designated, it is the responsibility of the agency/provider to contract with Medicaid MCOs to offer, provide, and bill for the new services. DOH, OASAS, OCFS, and OMH will not be responsible for assisting providers in obtaining contracts with MCOs, aside from confirming the provider's designation status.

Duplication:

There are no duplicative or conflicting rules identified.

Alternatives:

The six state plan services are part of a larger effort of the Medicaid redesign team developed within the larger stakeholder process. The state plan service is supported by CMS. There were no significant alternatives to be considered.

Federal Standards:

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

Compliance Schedule:

Regulated persons should not have compliance issues due to their associated agency being a child serving agency or agency with children's behavioral health and health experience that has the necessary licensure, certification, designation, or approval from DOH, OMH, OASAS, or OCFS to provide the services authorized by the proposed regulation.

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**STATEMENT IN LIEU OF
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.

**STATEMENT IN LIEU OF
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

Nature of Impact:

The proposed regulation would allow the Department to authorize the Office of Mental Health (OMH), Office of Alcoholism and Substance Abuse Services (OASAS), and the Office of Children and Family Services (OCFS) to designate qualified programs, providers and/or organizations to deliver the following new behavioral health and health services under the Medicaid program for eligible children/youth under 21 years of age: crisis intervention; community psychiatric support and treatment (CPST); psychosocial rehabilitation (PSR); family peer support services (FPSS); youth peer support and training (YPST); and services of other licensed practitioners.

The impact of the proposed regulation would be to expand employment opportunities for these agencies/providers. Agencies/providers who successfully go through the designation process to be able to provide these new Medicaid services may need to hire additional qualified staff to provide these services.

Categories and Numbers Affected:

The following job titles would be affected:

- Non-Physician Licensed Behavioral Health Professional
- Licensed Psychoanalyst
- Licensed Clinical Social Worker
- Licensed Marriage and Family Therapist
- Licensed Mental Health Counselor

- Licensed Master Social Worker

Regions of Adverse Impact:

The decision to apply to be designated as a provider of one or more of the new Medicaid behavioral health and health services for children and youth is voluntary. Therefore the proposed regulation would not adversely impact any region.

Minimizing Adverse Impact:

New York State would not have to minimize any adverse impact because this is not a mandatory process. Agencies/providers would only apply for designation if they choose to.

Self-employment Opportunities:

There will not be opportunities for self-employment. In order for an agency/provider to become designated to deliver any of the new services, it must be a child serving agency or an agency with children's behavioral health and health experience, and any practitioner providing behavioral health or health services must operate in a child serving agency or agency with children's behavioral health and health experience, that has the necessary licensure, certification, designation, or approval from DOH, OMH, OASAS, or OCFS to provide the services authorized by the proposed regulation.